

# EXHIBIT 41

Kelly, Dennis - Vol. I

March 26, 2008

Hartford, CT

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -  
IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO )  
U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris  
the Florida Keys, Inc. )  
v. ) Chief Magistrate  
Abbott Laboratories, Inc., ) Judge Marianne B.  
No. 06-CV-11337-PBS ) Bowler  
- - - - -

(cross captions appear on following pages)

Videotaped deposition of DENNIS KELLY

Volume I

Hartford, Connecticut

Wednesday, March 26, 2008

9:12 a.m.

Henderson Legal Services, Inc.

202-220-4158

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Kelly, Dennis - Vol. I

March 26, 2008

Hartford, CT

<p style="text-align: right;">Page 90</p> <p>1 A No.</p> <p>2 Q If you could turn to the next page,</p> <p>3 please. Under the heading "Invoice Analysis," I</p> <p>4 believe it's the fourth sentence down that begins</p> <p>5 with "These suggestions are made."</p> <p>6 Can you find that sentence for me,</p> <p>7 please?</p> <p>8 A Yes.</p> <p>9 Q And it reads, "These suggestions are made</p> <p>10 to save money through lower contract pricing or</p> <p>11 increase revenue through better spread between AWP</p> <p>12 and contract price."</p> <p>13 Did I read that sentence correctly?</p> <p>14 A Yes.</p> <p>15 Q What does that sentence mean to you?</p> <p>16 A I really don't know.</p> <p>17 I'm not familiar with this document, so I</p> <p>18 can't -- can't say what they meant by it.</p> <p>19 Q I understand that you've never seen this</p> <p>20 document before.</p> <p>21 And what I'm asking is your understanding</p> <p>22 of what that sentence means?</p>	<p style="text-align: right;">Page 92</p> <p>1 A I have heard it on occasion from a</p> <p>2 customer.</p> <p>3 Q In what context did you hear it from a</p> <p>4 customer?</p> <p>5 A In the context that they may not have been</p> <p>6 buying one of my products because of AWP and</p> <p>7 spread.</p> <p>8 Q And what did you understand that to</p> <p>9 mean?</p> <p>10 A I didn't know exactly what that</p> <p>11 meant. All I knew was that that was something AWP</p> <p>12 was something that we could not discuss and that was</p> <p>13 against Abbott policy.</p> <p>14 So anytime that ever came up, we would</p> <p>15 have to say that we don't get involved in it, we</p> <p>16 don't set it, and move on to another topic.</p> <p>17 Q Why is that?</p> <p>18 A Because we had -- because Abbott's policy</p> <p>19 was that we were not to discuss AWP or reimbursement</p> <p>20 issues with customers.</p> <p>21 Q And why?</p> <p>22 MR. SCANNAPIECO: Objection to</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. SCANNAPIECO: Objection to</p> <p>2 form.</p> <p>3 A I don't really -- I don't really</p> <p>4 know.</p> <p>5 BY MS. STRAWN:</p> <p>6 Q Does the term "better spread between AWP</p> <p>7 and contract price," does that phrase, just that</p> <p>8 phrase alone, mean anything to you?</p> <p>9 MR. SCANNAPIECO: Objection to</p> <p>10 form.</p> <p>11 A Not specifically, no.</p> <p>12 BY MS. STRAWN:</p> <p>13 Q Generally?</p> <p>14 A No.</p> <p>15 Q Well, you told me earlier that you have an</p> <p>16 understanding of what the term "AWP" is.</p> <p>17 Right?</p> <p>18 A Right, I do.</p> <p>19 Q And what is that?</p> <p>20 A Average wholesaler price.</p> <p>21 Q Have you ever heard the term "spread"</p> <p>22 before?</p>	<p style="text-align: right;">Page 93</p> <p>1 form.</p> <p>2 A I don't know. All I can say is that was</p> <p>3 the Abbott policy.</p> <p>4 And we were told that if we violated that</p> <p>5 policy that there would be consequences for</p> <p>6 that, up to and including termination.</p> <p>7 BY MS. STRAWN:</p> <p>8 Q Termination for -- a penalty for</p> <p>9 what?</p> <p>10 I'm sorry.</p> <p>11 A Discussing reimbursement issues with</p> <p>12 customers.</p> <p>13 Q And so if a customer raised the issue with</p> <p>14 you, what did you -- how did you respond?</p> <p>15 A I would respond that that's something that</p> <p>16 I have nothing to do with, that the company has</p> <p>17 nothing to do with, and that we don't -- we don't</p> <p>18 set that and we can't discuss it.</p> <p>19 Q Did you respond in any other fashion?</p> <p>20 A No, that's the way I would respond.</p> <p>21 Q Did you ever say anything else?</p> <p>22 MR. SCANNAPIECO: Objection to</p>

24 (Pages 90 to 93)

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Hartford, CT

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DENNIS KELLY

Subscribed and sworn to

\_\_\_\_\_.  
Before me this \_\_\_\_ day of \_\_\_\_\_,  
2008.\_\_\_\_\_  
Notary Public

My Commission Expires:

Page 351

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## C E R T I F I C A T E

I hereby certify that I am a Notary Public,  
in and for the State of Connecticut, duly  
commissioned and qualified to administer oaths.I further certify that the deponent named in  
the foregoing deposition was by me duly sworn, and  
thereupon testified as appears in the foregoing  
deposition; that said deposition was taken by me  
stenographically in the presence of counsel and  
reduced to typewriting under my direction, and the  
foregoing is a true and accurate transcript of the  
testimony.I further certify that I am neither of  
counsel nor attorney to either of the parties to  
said suit, nor am I an employee of either party to  
said suit, nor of either counsel in said suit, nor  
am I interested in the outcome of said cause.Witness my hand and seal as Notary Public  
this \_\_\_\_ day of \_\_\_\_\_, 2008.

Clifford Edwards

Notary Public

My commission expires: 9/30/2011

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Henderson Legal Services, Inc.

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# EXHIBIT 42

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  
PRICE LITIGATION ) Civil Action No.  
 ) 01-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 )  
United States of America, ) Hon. Patti Saris  
ex rel. Ven-a-Care of the )  
Florida Keys, Inc., v. )  
Abbott Laboratories, Inc., )  
and Hospira, Inc. )  
CIVIL ACTION NO. 06-11337-PBS )

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  
PRICE LITIGATION ) Civil Action No.  
 ) 01-CV-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 ) Judge Patti B. Saris  
State of Arizona v. Abbott )  
Labs., et al. )  
Civil Action No. 06-CV-11069-PBS )

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ORAL AND VIDEOTAPED DEPOSITION OF  
CLIFFORD KRAJEWSKI  
April 26, 2007

CONFIDENTIAL

\*\*\*\*\*

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

<p style="text-align: right;">Page 114</p> <p>1 Q. And what did Michael Heggie tell you about 2 the spread?</p> <p>3 A. That that was -- I left the meeting with the 4 understanding that that was a component of their 5 reimbursement.</p> <p>6 Q. Now, the meeting that you're referring to, is 7 the meeting you had with Michael Heggie to follow up 8 on Susan Rhodus' questions; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And I just want to be clear that was 11 approximately at the beginning of your tenure as a NAM 12 in 1990; is that correct?</p> <p>13 A. That is an accurate statement.</p> <p>14 Q. And when you said that Michael Heggie 15 explained to you that it was a component of their 16 spread, who did you mean when you said "their"?</p> <p>17 MR. WINCHESTER: Objection, 18 mischaracterizes his testimony.</p> <p>19 A. Their would be -- specifically as it related 20 to GeriMed in that conversation with Michael, but I 21 applied that to all other Alternate Site customers as 22 well that were involved in Medicare and Medicaid.</p> <p>23 Q. (BY MS. BROOKER) Why did you apply that to 24 all of their customers?</p> <p>25 A. I'm not sure, other than the fact that it</p>	<p style="text-align: right;">Page 116</p> <p>1 customers?</p> <p>2 MR. WINCHESTER: Objection, form. 3 Speculation.</p> <p>4 A. I'm not a reimbursement specialist, so I 5 never got involved in that --</p> <p>6 Q. (BY MS. BROOKER) Okay.</p> <p>7 A. -- nor do I have working knowledge of it.</p> <p>8 Q. What kinds of conversations did you have with 9 customers about spread?</p> <p>10 A. I did never have any customer conversations 11 about spread.</p> <p>12 Q. Did you have conversation about spread with 13 Susan Rhodus once you spoke to Michael Heggie?</p> <p>14 A. No. The -- my reply to Susan Rhodus was, 15 "You can get the AWP information you're looking for. 16 It's public information and it's been published by the 17 Redbook."</p> <p>18 Q. Did other customers at any time after GeriMed 19 ask you questions about average wholesale prices or 20 where they could get access to them?</p> <p>21 A. No. There were no other inquiries made of 22 me.</p> <p>23 Q. Okay. Did you understand that most of your 24 customers knew where to go to get average wholesale 25 prices?</p>
<p style="text-align: right;">Page 115</p> <p>1 seemed to be logical.</p> <p>2 Q. Okay. Explain to me how it was logical.</p> <p>3 A. Being a GeriMed member was -- was no 4 different than being a nursing home, being a surgery 5 center, being a homecare pharmacy.</p> <p>6 Q. How was spread important to the customers --</p> <p>7 MR. WINCHESTER: Objection --</p> <p>8 Q. (BY MS. BROOKER) -- from your understanding 9 based on your 25 years at Abbott?</p> <p>10 A. My understanding from --</p> <p>11 MR. WINCHESTER: Hold on. Objection, 12 form to speculation.</p> <p>13 Go ahead.</p> <p>14 A. I've shared with you what my understanding 15 of -- of what the spread was, was it was a component 16 of their reimbursement.</p> <p>17 Q. (BY MS. BROOKER) No. But what I asked this 18 time was based on your 25 years of experience at 19 Abbott, what was your understanding about how spread 20 was important to customers?</p> <p>21 MR. WINCHESTER: Objection, form. 22 Speculation.</p> <p>23 A. Again, it was a component of their 24 reimbursement.</p> <p>25 Q. (BY MS. BROOKER) How was it used by</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. WINCHESTER: Objection, form. 2 Speculation.</p> <p>3 A. No. I don't know what -- what my customers 4 were thinking. I do know that they weren't asking 5 about it.</p> <p>6 Q. (BY MS. BROOKER) Who -- with whom did you 7 speak about reimbursement issues other than Michael 8 Heggie?</p> <p>9 A. John Ward.</p> <p>10 Q. John Ward. Okay. Who was for a time your 11 direct supervisor, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And that would have been during the 1994 to 14 July 1996 time period when you were the manager of 15 distributor relations; is that correct?</p> <p>16 A. No. It would have been shortly after I spoke 17 with Susan Rhodus.</p> <p>18 Q. Oh, that you then went and spoke to John 19 Ward?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Why did you speak with Michael 22 Heggie -- excuse me, John Ward after Michael Heggie?</p> <p>23 MR. WINCHESTER: Objection, form. 24 Mischaracterizes his testimony. Assumes facts.</p> <p>25 A. I -- I spoke with John because I needed</p>

30 (Pages 114 to 117)

## FREDERICKS-CARROLL REPORTING

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## CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON
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Page 308

1 STATE OF TEXAS )  
 2 COUNTY OF TRAVIS )  
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 5 I, CYNTHIA VOHLKEN, CSR #1059, do hereby  
 6 certify that, pursuant to the agreement hereinabove  
 7 set forth, there came before me on the 26th day of  
 8 April, 2007, at 8:03 o'clock a.m., in the offices of  
 9 Jones Day, 77 W. Wacker, Suite 3500, Chicago,  
 10 Illinois, the following named person, to-wit:  
 11 CLIFFORD KRAJEWSKI, who was by me duly sworn to  
 12 testify to the truth and nothing but the truth of  
 13 witness' knowledge touching and concerning the matters  
 14 in controversy in this cause; that such witness was  
 15 thereupon examined under oath, and the examination  
 16 transcribed by computer-assisted transcription by me  
 17 or under my supervision, and that the deposition is a  
 18 true record of the testimony given by the witness.  
 19 I further certify that I am neither attorney  
 20 nor counsel for, nor related to or employed by, any of  
 21 the parties to the action in which this deposition is  
 22 taken and, further, that I am not a relative or  
 23 employee of any attorney or counsel employed by the  
 24 parties hereto, or financially interested in the  
 25 action.

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1 I, CLIFFORD KRAJEWSKI, have read the foregoing  
 2 deposition and hereby affix my signature that same is  
 3 true and correct, except as noted above.  
 4

CLIFFORD KRAJEWSKI

9 THE STATE OF )  
 10 COUNTY OF )

11 Before me, , on this day  
 12 personally appeared CLIFFORD KRAJEWSKI, known to me  
 13 (or proved to me under oath or through  
 14 ) (description of identity  
 15 card or other document) to be the person whose name is  
 16 subscribed to the foregoing instrument and  
 17 acknowledged to me that they executed the same for the  
 18 purposes and consideration therein expressed.

19 Given under my hand and seal of office this  
 20 day of , 2007.

24 NOTARY PUBLIC IN AND FOR  
 25 THE STATE OF

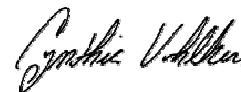
Page 309

1 That the amount of time used by each party at  
 2 the deposition is as follows:

3 Ms. Renee Brooker - 03:39

4 Mr. Raymond Winter - 02:40

5  
 6 IN WITNESS WHEREOF I have hereunto set my  
 7 hand on this 11th day of May, A.D. 2007.



Cynthia Vohlken, Texas CSR 1059

Expiration Date: 12/31/2008

Firm Registration No. 82

Fredericks-Carroll Reporting

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Suite 200 W

Austin, Texas 78757

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(800) 234-3376

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17 JOB NO. 232

78 (Pages 306 to 309)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161



Page 310

1 NO. D-1-GV-04-001286  
 2 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
 3 ex rel. )  
 4 VEN-A-CARE OF THE )  
 5 FLORIDA KEYS, INC., )  
 6 Plaintiffs, )  
 7 VS. ) TRAVIS COUNTY, TEXAS  
 8 )  
 9 ABBOTT LABORATORIES INC., )  
 10 ABBOTT LABORATORIES, )  
 11 HOSPIRA, INC., and B. BRAUN )  
 12 MEDICAL INC., )  
 13 Defendant(s). ) 201ST JUDICIAL DISTRICT

14 REPORTER'S CERTIFICATION  
 15 DEPOSITION OF CLIFFORD KRAJEWSKI  
 16 April 26, 2007

17 I, Cynthia Vohlken, Certified Shorthand Reporter  
 18 in and for the State of Texas, hereby certify to the  
 19 following:  
 20 That the witness, CLIFFORD KRAJEWSKI, was duly  
 21 sworn by the officer and that the transcript of the  
 22 oral deposition is a true record of the testimony  
 23 given by the witness;  
 24 That the deposition transcript was submitted on  
 25 May 11, 2007, to the witness or to the attorney for  
 the witness for examination, signature and return to  
 me by June 4, 2007;

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1 That the amount of time used by each party at the  
 2 deposition is as follows:  
 3 Ms. Renee Brooker - 03:39  
 4 Mr. Raymond Winter - 02:40

5 That pursuant to information given to the  
 6 deposition officer at the time said testimony was  
 7 taken, the following includes counsel for all parties  
 8 of record:

9  
 10 MR. RAYMOND WINTER,  
 11 Attorney for Plaintiff State of Texas;  
 12 MR. JARRETT ANDERSON,  
 13 Attorney for the Relator;  
 14 MR. JASON WINCHESTER,  
 15 Attorney for Defendants Abbott  
 16 Laboratories, Inc. and Hospira, Inc.  
 17 MS. RENEE BROOKER,  
 18 Attorney for Plaintiff United States of  
 19 America  
 20 MR. CHRISTOPHER STUART,  
 21 Attorney for Plaintiff State of Arizona  
 22 and MDL Plaintiffs  
 23 MR. ELISEO SISNEROS, Attorney for the  
 24 State of California  
 25

1 I further certify that I am neither counsel for,  
 2 related to, nor employed by any of the parties or  
 3 attorneys in the actions in which this proceeding was  
 4 taken, and further that I am not financially or  
 5 otherwise interested in the outcome of the action.

Page 312

1 Further certification requirements pursuant to  
 2 Rule 203 of TRCP will be certified to after they have  
 3 occurred.

4 Certified to by me this 11th day of May, 2007.

5  
 6  
 7  
 8  
 9 Cynthia Vohlken, Texas CSR 1059  
 10 Expiration Date: 12/31/2008  
 11 Firm Registration No. 82  
 12 Fredericks-Carroll Reporting  
 13 7719 Wood Hollow Drive, Suite 156  
 14 Austin, Texas 78731  
 15 Telephone: (512) 477-9911  
 16 (800) 234-3376  
 17 Fax: (512) 345-1417

18 JOB NO. 2328

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to  
 3 the deposition officer on , 2007;

4 If returned, the attached Changes and Signature  
 5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered  
 7 to Mr. Raymond Winter, Custodial Attorney;

8 That \$ is the deposition officer's  
 9 charges to the Plaintiff(s) for preparing the original  
 10 deposition transcript and any copies of exhibits;

11 That the deposition was delivered in accordance  
 12 with Rule 203.3, and that a copy of this certificate  
 13 was served on all parties shown herein on and filed  
 14 with the Clerk.

15 Certified to by me this day of  
 16 , 2007.

17  
 18  
 19  
 20 Cynthia Vohlken, Texas CSR 1059  
 21 Expiration Date: 12/31/2008  
 22 Firm Registration No. 82  
 23 Fredericks-Carroll Reporting  
 24 7719 Wood Hollow Drive, Suite 156  
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26 JOB NO. 2328

79 (Pages 310 to 313)

FREDERICKS-CARROLL REPORTING

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# EXHIBIT 43

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  
PRICE LITIGATION ) Civil Action No.  
 ) 01-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 )  
United States of America, ) Hon. Patti Saris  
ex rel. Ven-a-Care of the )  
Florida Keys, Inc., v. )  
Abbott Laboratories, Inc., )  
and Hospira, Inc. )  
CIVIL ACTION NO. 06-11337-PBS )

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  
PRICE LITIGATION ) Civil Action No.  
 ) 01-CV-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 ) Judge Patti B. Saris  
State of Arizona v. Abbott )  
Labs., et al. )  
Civil Action No. 06-CV-11069-PBS )

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

KARLA KREKLOW

June 28, 2007

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FREDERICKS-CARROLL REPORTING

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Page 54	Page 56
<p>1 Q. Okay. The same with the Loyola University 2 Medical Center account? 3 A. Yes. 4 Q. Was it preexisting before you became the Area 5 Business Manager? 09:50 6 A. Yes, it was. 7 Q. And what about the Children's Memorial 8 Medical Center account? 9 A. Yes, it was. 10 Q. Okay. What other major accounts do you 09:50 11 recall in your area that you interfaced with or had 12 responsibility for negotiations with? 13 A. Advocate. 14 Q. I'm sorry? 15 A. Advocate. 16 Q. Advocate. Could you spell it? 17 A. A-d-v-o-c-a-t-e. 18 Q. A-d-v-o -- 19 A. C-a-t-e. 20 Q. C-a-t-e. Advocate. Okay. I thought there 09:51 21 was an "r" in there somewhere. 22 And -- and what kind of an account was 23 Advocate? 24 A. Home infusion. 25 Q. It was a home infusion pharmacy? 09:51</p>	<p>1 Q. Did it have three? 2 A. More. 3 Q. How many? 4 A. They had three when I was there. Prior to 5 when I came on board, there were several, and I do not 09:52 6 know the number. 7 Q. So by the time you came over to the Home 8 Infusion business unit in January of '96, that number 9 was down to three? 10 A. Yes. 11 Q. Where were they located? 12 A. Chicago, New Jersey and L.A. 13 Q. Did the Abbott home infusion pharmacies, the 14 Abbott-owned home infusion pharmacies, did they 15 utilize the CHIP system as part of the software that 09:53 16 they had available to them? 17 A. Yes, they did. 18 Q. Did they utilize any other computer program, 19 software program, that would identify product 20 information, pricing information besides the CHIP 09:53 21 system? 22 A. Not to my knowledge. 23 Q. Was the CHIP system in place when you came 24 over to Home Infusion in January of '96? 25 A. Yes, it was. 09:53</p>
Page 55	Page 57
<p>1 A. Yes. 2 Q. And where was it located? 3 A. Downers Grove, Illinois. 4 Q. I'm sorry. The first name? 5 A. Downers Grove. 09:51 6 Q. Downers Grove? 7 A. D-o-w-n-e-r-s Grove. 8 Q. Okay. And where is Downers Grove, Illinois? 9 A. It is southwest of O'Hare airport. 10 Q. Okay. So it's the Chicago area then? 09:51 11 A. Correct. 12 Q. Okay. And who was it that -- which of your 13 sales reps had the responsibility primarily for the 14 Advocate home infusion account? 15 A. Chris. 09:51 16 Q. Could you explain, please, the home infusion 17 business model. 18 A. The home infusion business model intended to 19 work with large teaching institutions and assist them 20 in getting into the home infusion business to retain 09:52 21 their patients. 22 Q. As I understand it, Abbott at one time 23 operated its own Abbott-owned home infusion 24 pharmacies, correct? 25 A. Correct. 09:52</p>	<p>1 Q. Do you recall when Abbott first started up 2 its Home Infusion Services business unit? 3 A. Either late 1975 or early 1976 to my 4 recollection. 5 Q. And back in those days, that's when Abbott 09:54 6 was -- the function of the Home Infusion business unit 7 was to operate the Abbott home infusion pharmacies; 8 true? 9 A. Yes. 10 Q. Okay. And at some point in time Abbott made 09:54 11 a decision that instead of competing with other home 12 infusion pharmacies it would enter into partnerships 13 with those home infusion pharmacies; true? 14 MR. WINCHESTER: Objection, form. 15 A. It wasn't partnerships, but we entered into a 09:54 16 different business model where we did assist hospitals 17 into getting into the home infusion business. 18 Q. (BY MR. WINTER) Okay. So as part of this 19 business model of assisting hospitals in getting into 20 the home infusion business, Abbott would enter into a 09:54 21 business relationship with those hospitals where 22 Abbott would essentially run that home infusion 23 pharmacy at least in part on behalf of the hospital? 24 Is that a fair characterization? 25 A. No. 09:55</p>

15 (Pages 54 to 57)

## FREDERICKS-CARROLL REPORTING

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<p style="text-align: right;">Page 266</p> <p>1 there.</p> <p>2 Q. And Mr. Heggie was there when you were in</p> <p>3 Alternate Site Product Sales?</p> <p>4 A. In Home Infusion.</p> <p>5 Q. He -- when you were in Alternate Site Product 03:09</p> <p>6 Sales, Mr. Heggie was in Home Infusion?</p> <p>7 A. Yes, he was.</p> <p>8 Q. And Chris Snead was somebody who was in</p> <p>9 Alternate Site Product Sales when you were there,</p> <p>10 right? 03:09</p> <p>11 A. Yes, that's true.</p> <p>12 Q. Steve Kipperman?</p> <p>13 A. Yes.</p> <p>14 Q. What kinds of discussions did you have with</p> <p>15 customers when you were in Home Infusion about 03:09</p> <p>16 reimbursement and spread issues?</p> <p>17 A. I did not have any discussions with regards</p> <p>18 to that.</p> <p>19 Q. I'm sorry?</p> <p>20 A. I did not have any discussions with regards 03:09</p> <p>21 to that.</p> <p>22 Q. Ah. I thought you just told me a minute ago</p> <p>23 that when you were in Home Infusion you did have</p> <p>24 discussions with customers --</p> <p>25 A. About reim- -- definitely about 03:10</p>	<p style="text-align: right;">Page 268</p> <p>1 reimbursement.</p> <p>2 Q. (BY MR. WINTER) I'm sorry. In performing --</p> <p>3 A. It would assist customers in performing the</p> <p>4 reimbursement process.</p> <p>5 Q. Okay. And as part of the portfolio of 03:11</p> <p>6 serv- -- portfolio of services that Abbott Home</p> <p>7 Infusion offered to the customers, Abbott would</p> <p>8 actually take on that task for the customers and do</p> <p>9 the third-party billing, right?</p> <p>10 A. In certain instances, yes, we did. 03:11</p> <p>11 Q. When the customer elected to --</p> <p>12 A. Have us do it.</p> <p>13 Q. -- to purchase that abilit- -- that -- that</p> <p>14 product, right?</p> <p>15 A. Sure. Exactly. 03:11</p> <p>16 Q. Okay. I'm showing you now what's marked as</p> <p>17 Exhibit 294.</p> <p>18 (Document tendered.)</p> <p>19 Q. (BY MR. WINTER) Ma'am, do you recognize this</p> <p>20 document? 03:11</p> <p>21 A. Let me look at it, please.</p> <p>22 THE REPORTER: We have to change our</p> <p>23 videotape.</p> <p>24 MR. WINTER: Yeah.</p> <p>25 THE REPORTER: Change our videotape, 03:11</p>
<p style="text-align: right;">Page 267</p> <p>1 reimbursement.</p> <p>2 Q. Oh, okay.</p> <p>3 A. That we offered reimbursement, not what</p> <p>4 anyone would experience during the reimbursement</p> <p>5 process.</p> <p>6 Q. Well, didn't you make available to your</p> <p>7 customers in the home infusion area information</p> <p>8 that -- from which the customers could clearly see</p> <p>9 what the spread was and how much reimbursement they'd</p> <p>10 be getting? 03:10</p> <p>11 A. I don't know what was on the CHIP system. I</p> <p>12 never had the CHIP system on my computer; I never</p> <p>13 operated the CHIP system, nor did I want to.</p> <p>14 Q. So you were just completely in the dark about</p> <p>15 the CHIP system? You didn't have any idea what it 03:10</p> <p>16 offered?</p> <p>17 A. I knew some of the benefits about inventory</p> <p>18 management, reimbursement, that they had the forms on</p> <p>19 it and that you could electronically process the</p> <p>20 forms, which was a big advantage at that time. 03:10</p> <p>21 Q. So you knew that the CHIP system would assist</p> <p>22 the customers in evaluating their reimbursement,</p> <p>23 right?</p> <p>24 MR. WINCHESTER: Objection, form.</p> <p>25 A. It would assist customers in performing their 03:11</p>	<p style="text-align: right;">Page 269</p> <p>1 please.</p> <p>2 THE VIDEOGRAPHER: The time is now</p> <p>3 3:12 p.m. This is the end of Tape 5. We're going off</p> <p>4 the record.</p> <p>5 (Discussion off the record.) 03:14</p> <p>6 THE VIDEOGRAPHER: The time is now</p> <p>7 3:14 p.m. This is the beginning of Tape 6. We are</p> <p>8 back on the record.</p> <p>9 Q. (BY MR. WINTER) All right, ma'am. I've</p> <p>10 asked you to take a look at what's been marked as 03:14</p> <p>11 Exhibit 294. For the record, it's a multi-page</p> <p>12 document that was produced from Abbott's business</p> <p>13 records, and the first Bates page that I have is the</p> <p>14 second page of the document, TXABT 193771 through</p> <p>15 TXABT 193787. 03:14</p> <p>16 Do you recognize this, ma'am?</p> <p>17 A. Yes, I do.</p> <p>18 Q. What is it?</p> <p>19 A. It's a sales brochure for Home Infusion</p> <p>20 service offerings. 03:14</p> <p>21 Q. Okay. And is this the type of sales material</p> <p>22 that you would routinely share with your customers and</p> <p>23 potential customers when you were an Area Business</p> <p>24 Manager in Home Infusion?</p> <p>25 A. This was the brochure that was available when 03:15</p>

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<p style="text-align: right;">Page 270</p> <p>1 I began as Area Business Manager. It was later phased 2 out. 3 Q. And did you have it -- did you update this 4 brochure? 5 A. We replaced it with a different one. 03:15 6 Q. Okay. And did you have a hand in drafting 7 the replacement brochure? 8 A. No. 9 Q. Was that done by the marketing department 10 within Home Infusion? 03:15 11 A. It was either the marketing department -- 12 either they did it or they oversaw it. They could 13 have hired a firm. But I don't know which. 14 Q. And that was the department headed up by 15 Susan Rolf at one time? 03:15 16 A. It was the department headed up by her. I 17 don't know if she did it, because I don't know when 18 this was done. But like I said, it was in effect when 19 I started. 20 Q. And how deep into your tenure was it updated? 03:15 21 A. I'm just thinking of -- there was another 22 Marketing Manager before Susan Rolf. 23 Q. Okay. 24 A. So I don't know if she could have done it. 25 But I don't remember her name. Mary something. 03:16</p>	<p style="text-align: right;">Page 272</p> <p>1 system. 2 Do you see that? 3 A. Yes. 4 Q. Okay. And if you look at the testimonials on 5 the next page -- 03:17 6 A. Yes. 7 Q. -- you've got testimonials from Ken 8 Trowbridge from Intermountain Health Care Home 9 Services; Shay Fields from Baylor Home Care in Dallas; 10 Audrey Belk, Presbyterian Home Care; Jennifer 03:17 11 Huppenthal of LHS Home Care -- Home Community Care; 12 Renee Myers. 13 Do you see those? 14 A. Yes. 15 Q. Do you recognize those individuals? 03:18 16 A. I recognize their names. None of them were 17 my customers. 18 Q. Who called on Baylor? 19 A. It was -- I can't tell you the 20 representative's name, but it was under Shirley Beyer. 03:18 21 Q. Shirley Beyer? 22 A. Uh-huh. My counterpart. 23 Q. And she was one of your co -- one of the 24 three -- 25 A. Yes. My counterpart. 03:18</p>
<p style="text-align: right;">Page 271</p> <p>1 Q. And -- 2 A. What -- what was your second -- what was your 3 question? 4 Q. My question was how far into your tenure in 5 Home Infusion -- 6 A. Uh-huh. 7 Q. -- was this updated and replaced? 8 A. Replaced? 9 Q. Yes, ma'am. 10 A. It was -- oh, probably in year two it was 03:16 11 replaced. 12 Q. So you think sometime around 1998? 13 A. Yes. It's possible. 14 Q. Okay. So for the time period '96 to '98, 15 when you were the Area Business Manager, this would 03:16 16 have been the material that you would have used in 17 your calls on accounts and potential accounts? 18 A. Yes. 19 Q. Okay. And if you look on the third page of 20 the document, the one with the Bates label 193772 -- 03:16 21 A. Yes. 22 Q. -- Abbott is advertising that among the 23 products and services that it -- that it will offer 24 are billing and reimbursement services and the Client 25 Home Infusion Program or CHIP integrated information 03:17</p>	<p style="text-align: right;">Page 273</p> <p>1 Q. -- area sales managers? 2 A. Yes. 3 Q. Okay. Did she also have responsibility for 4 the last one that's listed there, the one in 5 Corpus Christi, Texas? 03:18 6 A. I would assume so. I -- I don't remember 7 specific. I would assume so. If it was in Texas, she 8 had it. 9 Q. And did your other -- your two colleagues, 10 your two counterparts, did they each have three sales 03:18 11 reps reporting to them? 12 A. I -- approximately. I can't tell you -- 13 Q. So you had approximately nine or -- I guess 14 12 personnel that were in sales all together? 15 A. Right. There was another Area Business 03:18 16 Manager that called on Texas, but I don't know -- I 17 don't remember if that was at the same time Shirley 18 was there or before she came in. That was Kathy 19 Riddle. So I don't know -- she could have called on 20 Spohn and Baylor as -- 03:19 21 Q. Is that the name of it, Spohn? 22 A. Spohn, uh-huh. 23 Q. Approximately how many customers all together 24 did Home Infusion Services have? 25 A. The max that we had when I was there was 28. 03:19</p>

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<p>1 Q. Did --</p> <p>2 A. Total. Not all at one time.</p> <p>3 Q. So it fluctuated over time, is that --</p> <p>4 A. Sure. Uh-huh.</p> <p>5 Q. Okay. What was the most number of customers 03:19</p> <p>6 you had at any one given point in time?</p> <p>7 A. That I had? I mean, that we --</p> <p>8 Q. That you had as a unit.</p> <p>9 A. As I -- as I understand it, 20 -- 22,</p> <p>10 something like that. In the 20s. 03:20</p> <p>11 Q. How did Home Infusion Services organize its</p> <p>12 business records pertaining to those 22 customers?</p> <p>13 A. What does that mean?</p> <p>14 Q. Well, did you maintain records for each of</p> <p>15 the -- if you -- 03:20</p> <p>16 A. Yes.</p> <p>17 Q. At any one given point in time you had 22</p> <p>18 customers, right?</p> <p>19 A. Yes.</p> <p>20 Q. How did the Home Infusion Services Department 03:20</p> <p>21 organize its record-keeping pertaining to those</p> <p>22 customers?</p> <p>23 A. The sales representative had a file; the Area</p> <p>24 Business Manager had a file. We -- if they were -- we</p> <p>25 were doing reimbursement, we had numerous files, one 03:20</p>	<p>1 Q. (BY MR. WINTER) And was this an account that</p> <p>2 was one of your accounts?</p> <p>3 A. Yes. Became one of my accounts.</p> <p>4 Q. And -- in other words, did it pre-exist</p> <p>5 before you -- as an Abbott account before you came 03:21</p> <p>6 into Home Infusion Services in January, '96?</p> <p>7 A. Yes.</p> <p>8 Q. So you took over the account?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And they weren't enrolled in the CHIP 03:21</p> <p>11 system?</p> <p>12 A. They -- they did their own reimbursement</p> <p>13 utilizing the CHIP system.</p> <p>14 Q. Okay. So they purchased the CHIP system from</p> <p>15 Abbott? True? 03:22</p> <p>16 A. They didn't purchase it, but they leased it.</p> <p>17 Q. They had a license agreement?</p> <p>18 A. Yes, they did.</p> <p>19 Q. Okay. Which means they had access to the</p> <p>20 CHIP system on their computers? 03:22</p> <p>21 A. Yes, they did.</p> <p>22 Q. Okay. And they utilized the CHIP system in</p> <p>23 order to process their own reimbursement claims?</p> <p>24 A. Yes, they did.</p> <p>25 Q. Okay. So they were not one of the customers 03:22</p>
Page 275	Page 277
<p>1 for each patient. If we were doing mixing, the</p> <p>2 pharmacy would have files.</p> <p>3 Q. The Abbott pharmacy?</p> <p>4 A. Yes.</p> <p>5 Q. And was there an electronic file that was 03:20</p> <p>6 maintained by the reimbursement department, like Ginny</p> <p>7 Tobiason's department?</p> <p>8 A. If it was on CHIP, yes.</p> <p>9 Q. Were there some Abbott home infusion</p> <p>10 customers that were not on the CHIP system? 03:21</p> <p>11 A. Yes.</p> <p>12 Q. How many?</p> <p>13 A. I -- again, I can only speak to my -- for</p> <p>14 myself. One -- the largest one was called</p> <p>15 PharmaThera. 03:21</p> <p>16 Q. PharmaThera?</p> <p>17 A. Uh-huh.</p> <p>18 Q. How do you spell that?</p> <p>19 A. P-h-a-r-m-a-T-h-e-r-a in Memphis.</p> <p>20 Q. And they were a home infusion pharmacy? 03:21</p> <p>21 A. Yes.</p> <p>22 Q. Who were they owned by?</p> <p>23 A. Larry Robinson.</p> <p>24 THE REPORTER: Larry?</p> <p>25 THE WITNESS: Larry Robinson. 03:21</p>	<p>1 where Abbott did the third-party billing on behalf of</p> <p>2 the customers?</p> <p>3 A. That's correct.</p> <p>4 Q. But there were other customers for whom</p> <p>5 Abbott actually did the third-party billing? 03:22</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Mr. Sellers testified that for all of</p> <p>8 the customers that participated in the Home Infusion</p> <p>9 business model, Abbott shared in the reimbursement</p> <p>10 proceeds. 03:22</p> <p>11 MR. WINCHESTER: Objection, form.</p> <p>12 Q. (BY MR. WINTER) Is that consistent with your</p> <p>13 understanding?</p> <p>14 A. I -- I can't guar- -- I can't be assured of</p> <p>15 that. If we did reimbursement, we typically did risk 03:22</p> <p>16 share. If we did not do reimbursement, we were paid</p> <p>17 per diem.</p> <p>18 Q. So if you did risk share -- a risk share in</p> <p>19 your understanding of the way that was used within</p> <p>20 Abbott Home Infusion Services, that was a situation 03:23</p> <p>21 where Abbott provided Abbott product to the customers</p> <p>22 on consignment?</p> <p>23 A. Yes.</p> <p>24 Q. And Abbott did the third-party billing and</p> <p>25 collections? 03:23</p>

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## FREDERICKS-CARROLL REPORTING

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1  
2  
3  
4  
5 I, KARLA KREKLOW, have read the foregoing  
6 deposition and hereby affix my signature that same is  
7 true and correct, except as noted above.  
8

9 KARLA KREKLOW

10 THE STATE OF )

11 COUNTY OF )

12 Before me,  
13 on this day personally appeared KARLA KREKLOW,  
14 known to me (or proved to me under oath or through  
15 (description of  
16 identity card or other document) to be the person  
17 whose name is subscribed to the foregoing instrument  
18 and acknowledged to me that she executed the same for  
19 the purposes and consideration therein expressed.

20 Given under my hand and seal of office this  
21 day of , 2007.  
22  
23

24 NOTARY PUBLIC IN AND FOR

25 THE STATE OF

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1 STATE OF TEXAS )

2 COUNTY OF TRAVIS )

3 I, WILLIAM M. FREDERICKS, CSR No. 2392, do  
4 hereby certify that, pursuant to the agreement  
5 hereinabove set forth, there came before me on the  
6 28th day of June, 2007, at 9:03 o'clock a.m., in the  
7 offices of Jones Day, 77 West Wacker Drive,  
8 Suite 3500, Chicago, Illinois, the following named  
9 person, to-wit: KARLA KREKLOW, who was by me duly  
10 sworn to testify to the truth and nothing but the  
11 truth of witness' knowledge touching and concerning  
12 the matters in controversy in this cause; that such  
13 witness was thereupon examined under oath, and the  
14 examination transcribed by computer-assisted  
15 transcription by me or under my supervision, and that  
16 the deposition is a true record of the testimony given  
17 by the witness.

18 I further certify that I am neither attorney  
19 nor counsel for, nor related to or employed by, any of  
20 the parties to the action in which this deposition is  
21 taken and, further, that I am not a relative or  
22 employee of any attorney or counsel employed by the  
23 parties hereto, or financially interested in the  
24 action.

25 That the amount of time used by each party at

Page 360

1 the deposition is as follows:

2 Mr. Raymond C. Winter - 05:40

3 Mr. Rand J. Riklin - 00:46

4 IN WITNESS WHEREOF I have hereunto set my  
5 hand on this 12th day of July, A.D. 2007.  
6  
7

8 WILLIAM M. FREDERICKS, Texas CSR 2392

9 Expiration Date: 12/31/2007

10 Firm Registration No. 82

11 Fredericks-Carroll Reporting

12 7800 Shoal Creek Boulevard

13 Suite 200 W

14 Austin, Texas 78757

15 Telephone: (512) 477-9911

16 (800) 234-3376

17 Fax: (512) 345-1417

18 JOB NO. 2494  
19  
20  
21  
22  
23  
24  
25

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1 NO. D-1-GV-04-001286

2 THE STATE OF TEXAS ) IN THE DISTRICT COURT

3 )

4 ex rel. )

5 VEN-A-CARE OF THE )

6 FLORIDA KEYS, INC., )

7 Plaintiffs, )

8 )

9 VS. ) TRAVIS COUNTY, TEXAS

10 )

11 ABBOTT LABORATORIES INC., )

12 ABBOTT LABORATORIES, )

13 HOSPIRA, INC., and B. BRAUN )

14 MEDICAL INC., )

15 Defendant(s). ) 201ST JUDICIAL DISTRICT

16 REPORTER'S CERTIFICATION

17 DEPOSITION OF KARLA KREKLOW

18 June 28th, 2007

19 I, WILLIAM M. FREDERICKS, Certified Shorthand

20 Reporter in and for the State of Texas, hereby certify

21 to the following:

22 That the witness, KARLA KREKLOW, was duly sworn by

23 the officer and that the transcript of the oral

24 deposition is a true record of the testimony given by

25 the witness;

That the deposition transcript was submitted on

July 12, 2007, to the witness or to the attorney for

the witness for examination, signature and return to

me by August 2, 2007;

That the amount of time used by each party at the

deposition is as follows:

Mr. Raymond C. Winter - 05:40

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## FREDERICKS-CARROLL REPORTING

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<p style="text-align: right;">Page 362</p> <p>1 That pursuant to information given to the  2 deposition officer at the time said testimony was  3 taken, the following includes counsel for all parties  4 of record:</p> <p>5 MR. RAYMOND WINTER,  6 Attorney for Plaintiff State of Texas;  7 MR. RAND J. RIKLIN,  8 Attorney for the Relator;  9 MR. JASON WINCHESTER,  10 Attorney for Defendants Abbott  11 Laboratories Inc. and Hospira, Inc.;  12 MS. ANN M. ST. PETER-GRIFFITH,  13 Attorney for Plaintiff United States of  14 America;  15 MS. AMBER M. NESBITT,  16 Attorney for Plaintiff State of Arizona  17 and MDL Plaintiffs;  18 MR. ELISEO SISNEROS, Attorney for the  19 State of California;</p> <p>20 I further certify that I am neither counsel for,  21 related to, nor employed by any of the parties or  22 attorneys in the actions in which this proceeding was  23 taken, and further that I am not financially or  24 otherwise interested in the outcome of the action.  25 Further certification requirements pursuant to  Rule 203 of TRCP will be certified to after they have  occurred.</p>	<p style="text-align: right;">Page 364</p> <p>1 FURTHER CERTIFICATION UNDER RULE 203 TRCP  2 The original deposition was/was not returned to  3 the deposition officer on August 2, 2007;  4 If returned, the attached Changes and Signature  5 page contains any changes and the reasons therefor;  6 If returned, the original deposition was delivered  7 to Mr. Raymond C. Winter, Custodial Attorney;  8 That \$ is the deposition officer's  9 charges to the Plaintiff(s) for preparing the original  10 deposition transcript and any copies of exhibits;  11 That the deposition was delivered in accordance  12 with Rule 203.3, and that a copy of this certificate  13 was served on all parties shown herein on and filed  14 with the Clerk.  15 Certified to by me this day of  16 , 2007.  17  18  19  20 WILLIAM M. FREDERICKS, Texas CSR 2392  21 Expiration Date: 12/31/2007  22 Firm Registration No. 82  23 Fredericks-Carroll Reporting  24 7719 Wood Hollow Drive, Suite 156  25 Austin, Texas 78731  Telephone: (512) 477-9911  (800) 234-3376  Fax: (512) 345-1417</p> <p>JOB NO. 2494 wmf</p>
<p style="text-align: right;">Page 363</p> <p>1 Certified to by me this 12th day of July, 2007.  2  3  4 WILLIAM M. FREDERICKS, Texas CSR 2392  5 Expiration Date: 12/31/2007  6 Firm Registration No. 82  7 Fredericks-Carroll Reporting  8 7719 Wood Hollow Drive, Suite 156  9 Austin, Texas 78731  10 Telephone: (512) 477-9911  11 (800) 234-3376  12 Fax: (512) 345-1417  13  14 JOB NO. 2494 wmf  15  16  17  18  19  20  21  22  23  24  25</p>	

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# EXHIBIT 44

Kreklow, Karla                      HIGHLY CONFIDENTIAL                      February 7, 2008  
Chicago, IL

Page 1

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----X  
In re: PHARMACEUTICAL                      ) MDL No. 1456  
INDUSTRY AVERAGE WHOLESALE                      ) CIVIL ACTION  
PRICE LITIGATION                      ) No. 01-12257-PBS  
-----X

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF KARLA KREKLOW

FEBRUARY 7, 2008

CHICAGO, ILLINOIS

Videotaped Deposition of KARLA KREKLOW,  
at 77 West Wacker Drive, 35th Floor, Chicago,  
Illinois, commencing at 9:00 a.m. on Thursday,  
February 7, 2008, before Donna M. Kazaitis, RPR,  
CSR No. 084-003145.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Kreklow, Karla      HIGHLY CONFIDENTIAL      February 7, 2008  
Chicago, IL

<p style="text-align: right;">Page 70</p> <p>1 force would be familiar with the terms? 2 MR. WINCHESTER: Objection, form, 3 speculation. 4 THE WITNESS: Yes, they should. 5 BY MS. ST. PETER-GRIFFITH: 6 Q. Would you expect that the contract 7 marketing unit would be familiar with the terms 8 of the various contracts that they proposed? 9 A. Yes. 10 MR. WINCHESTER: Objection, 11 speculation. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Would anyone within the Hospital 14 Business Sector have any involvement in the 15 negotiation or approval of or putting together 16 the contract proposals? 17 MR. WINCHESTER: Objection, form. 18 THE WITNESS: I don't know that. 19 BY MS. ST. PETER-GRIFFITH: 20 Q. In terms of pricing, where did either 21 your sales force, you, or the contract marketing 22 division, get their pricing information in</p>	<p style="text-align: right;">Page 72</p> <p>1 A. No. 2 MR. WINCHESTER: Objection, form, 3 speculation. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Did you have any other responsibilities 6 during this '96 through 2000 time period when you 7 were the business manager for Home Infusion? 8 A. No. 9 Q. What were the business models for Home 10 Infusion? 11 I know the counsel from Texas touched 12 upon that, but I wanted you to explain what were 13 -- first of all, was it more than one business 14 model for Home Infusion during your tenure there? 15 MR. WINCHESTER: Objection, form. 16 THE WITNESS: We had the same products 17 to offer during the time I was there. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Did you have different business models 20 for selling those products? 21 A. Sure. 22 Q. What were the business models that you</p>
<p style="text-align: right;">Page 71</p> <p>1 putting together these contract proposals? 2 A. The salespeople received the pricing 3 information from contract marketing. 4 Q. Is that Home Infusion contract 5 marketing? 6 A. Yes. 7 Q. Do you know where the Home Infusion 8 contract marketing individuals received their 9 pricing information? 10 A. Where they received it? I can tell you 11 they developed it based on how much Abbott 12 product was utilized by the client. 13 Q. And in developing that pricing, do you 14 know what prices for Abbott product they used? 15 A. I do not. 16 Q. Did you ever discuss with anyone how 17 they came up with the figures that they did? 18 A. No. 19 Q. Would that have been something that 20 would have been important for your sales force to 21 know or for you to know in negotiating these 22 contracts?</p>	<p style="text-align: right;">Page 73</p> <p>1 used for selling those products? 2 A. It would depend on what the needs of 3 the customer were. 4 Q. Well, how many different business 5 models did you have? 6 MR. WINCHESTER: Objection, form. 7 THE WITNESS: It could be an infinite 8 number depending on how many people wanted, if 9 they wanted one item or five items that we 10 offered or two or three of this and two, you 11 know. It's just different. 12 BY MS. ST. PETER-GRIFFITH: 13 Q. When you say "items," do you mean 14 different services that you offered? 15 A. Yes, yes. 16 Q. Okay. Let's start with that. 17 A. Okay. 18 Q. During your tenure when you were the 19 business manager in Home Infusion, were all of 20 the contracts consignment arrangements? 21 A. To my memory, yes. 22 Q. When I say "consignment arrangements" -</p>

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Kreklow, Karla      HIGHLY CONFIDENTIAL      February 7, 2008  
Chicago, IL

<p style="text-align: right;">Page 130</p> <p>1 MR. WINCHESTER: Well, that's not the 2 federal rules, Ann. I'm entitled to state a 3 basis for the objection. 4 MS. ST. PETER-GRIFFITH: When I ask 5 you. 6 MR. WINCHESTER: One word is not a 7 speaking objection. 8 MS. ST. PETER-GRIFFITH: Go ahead. 9 MR. WINCHESTER: No, not when you ask 10 me. My objections are proper. Move on. 11 BY MS. ST. PETER-GRIFFITH: 12 Q. You can answer the question. 13 A. I do not remember, but that would have 14 more to do with reimbursement, with the 15 reimbursement group than me. 16 Q. Why do you see it would have more to do 17 with the reimbursement group than you? 18 A. Are you referring to AWP? 19 Q. Well, this litigation concerns AWP. 20 But why do you feel that a litigation hold memo 21 concerning this litigation is more properly 22 directed to reimbursement as opposed to your</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Well, do you know whether a document 2 had to mention AWP in order to be responsive to a 3 litigation hold memo or discovery requests in 4 this case? 5 A. I wasn't aware of this case until 6 earlier in the year. 7 Q. So you and your staff then did nothing 8 to preserve records or documents concerning or 9 incident to a litigation hold memo relating to 10 the AWP litigation? 11 A. Reimbursement would have. They were 12 the only ones that had AWP information. 13 Q. But "Yes" or "No," your department did 14 or did not? 15 MR. WINCHESTER: Objection, 16 speculation. 17 THE WITNESS: Yes. They retained it. 18 BY MS. ST. PETER-GRIFFITH: 19 Q. Yes, your department retained it? 20 A. Yes. 21 Q. How do you know your department 22 retained it?</p>
<p style="text-align: right;">Page 131</p> <p>1 sales force? 2 A. Well, neither I nor the sales force had 3 any AWP information. 4 Q. Well, you negotiated the contracts; 5 didn't you? 6 A. Yes. But that didn't include AWP 7 information. 8 Q. Let me ask you this: Did your sales, 9 did the individuals that you were responsible for 10 as well as yourself, did any of you retain 11 records pursuant to a litigation hold memo 12 concerning the AWP litigation? 13 A. We didn't have anything to retain. 14 Q. Why do you say you didn't have anything 15 to retain? 16 A. Because there was no need for us to 17 have any AWP information. 18 Q. Well, how do you know whether or not 19 your documents were responsive to litigation 20 requests in this matter? 21 A. How do I know? Because it didn't 22 mention AWP. My documents didn't mention AWP.</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Because there was a letter that was 2 sent to the managers and possibly the field, I 3 don't remember, instructing that to occur. 4 Q. What did you and your staff do in order 5 to retain documents after receiving the 6 litigation hold memoranda? 7 A. I didn't throw anything away. 8 Q. What did you do with those documents? 9 A. They went to corporate records. 10 Q. Did you at any time verify that 11 information was being retained in compliance with 12 the litigation hold memoranda by you or your 13 staff? 14 A. No. 15 Q. What kind of computers did you have or 16 did you utilize within the Home Infusion business 17 unit -- let me ask it this way: Did you have a 18 personal computer on your desk? 19 A. Yes. 20 Q. What happened to that computer when you 21 left Home Infusion? 22 A. It went to salvage.</p>

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Kreklow, Karla      HIGHLY CONFIDENTIAL      February 7, 2008  
Chicago, IL

<p style="text-align: right;">Page 346</p> <p>1 MR. WINCHESTER: Objection, asked and 2 answered. 3 THE WITNESS: No. 4 BY MR. ANDERSON: 5 Q. Were you or your colleagues ever 6 involved in discussions about AWP? 7 MR. WINCHESTER: Objection, form, asked 8 and answered, speculation. 9 THE WITNESS: With customers? 10 BY MR. ANDERSON: 11 Q. Yes. 12 A. No. 13 Q. Were you involved in internal 14 discussions about AWP? 15 MR. WINCHESTER: Objection, asked and 16 answered. 17 THE WITNESS: Certainly the 18 reimbursement group spoke about it amongst 19 themselves. 20 BY MR. ANDERSON: 21 Q. Were you ever involved in the setting 22 of a list price?</p>	<p style="text-align: right;">Page 348</p> <p>1 Q. Do you recall looking at Exhibit 999 in 2 your prior deposition which involved the setting 3 of a list price on vancomycin in 1995? 4 MR. WINCHESTER: Objection, asked and 5 answered. 6 THE WITNESS: I'm not sure which 7 document that is, but I did not set the price for 8 vancomycin or any other product. 9 BY MR. ANDERSON: 10 Q. Were you involved in the setting of the 11 price? 12 A. No. 13 Q. Did you discuss with Mr. Sellers or 14 others at Abbott customer inquiries about changes 15 in AWP on vancomycin in 1995? 16 MR. WINCHESTER: Objection, asked and 17 answered. 18 THE WITNESS: I did in one instance. 19 BY MR. ANDERSON: 20 Q. And what was that instance? 21 MR. WINCHESTER: Objection, asked and 22 answered.</p>
<p style="text-align: right;">Page 347</p> <p>1 A. No. 2 Q. Were you ever involved in the setting 3 of an AWP? 4 A. No one at Abbott is involved in that. 5 Q. How do you know that? 6 A. Because we don't set AWP. No 7 manufacturing company does. 8 Q. How do you know that? 9 A. I've been told that. 10 Q. By who? 11 A. Mike Sellers. 12 Q. Other than Mr. Sellers, do you have any 13 information whatsoever that Abbott does not 14 control the setting of AWP? 15 A. I've seen several documents, but I 16 can't tell you which ones. 17 Q. Do you recall being involved back in 18 1995 with the setting of the list price on 19 vancomycin? 20 A. No. I was not. 21 Q. You're confident of that? 22 A. Positive.</p>	<p style="text-align: right;">Page 349</p> <p>1 THE WITNESS: A customer called Abbott 2 Park and wanted to know why the AWP had changed. 3 And I went over and talked with someone about 4 that. 5 BY MR. ANDERSON: 6 Q. What customer? 7 A. I have no idea. 8 Q. What was the basic focus of your 9 discussion? 10 MR. WINCHESTER: Objection, asked and 11 answered. 12 THE WITNESS: What is AWP, did AWP go 13 up or did it go down. 14 BY MR. ANDERSON: 15 Q. Who did you talk to? 16 A. Dave Brincks. 17 Q. And what did you learn? 18 MR. WINCHESTER: Objection, asked and 19 answered. 20 We spent a long time on this in the 21 first day, Jarrett. 22 THE WITNESS: I eventually learned that</p>

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# EXHIBIT 45

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESAL ) MDL No. 1456  
PRICE LITIGATION ) Civil Action  
 ) No. 01-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 )  
United States of America, ) Hon. Patti Saris  
ex rel. Ven-a-Care of the )  
Florida Keys, Inc., v. )  
Abbott Laboratories, Inc., )  
and Hospira, Inc. )  
CIVIL ACTION NO. 06-11337-PBS )

\*\*\*\*\*

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESAL ) MDL No. 1456  
PRICE LITIGATION ) Civil Action  
 ) No. 01-CV-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 ) Judge Patti B. Saris  
State of Arizona v. Abbott )  
Labs., et al. )  
Civil Action No. 06-CV-11069-PBS )

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

LYNN LEONE

July 18, 2007

\*\*\*\*\*

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<p style="text-align: right;">Page 146</p> <p>1 in the marketplace at list price?</p> <p>2 MS. CITERA: Objection to form.</p> <p>3 A. I can only speak for during the period of</p> <p>4 time in the 1990s for what we were doing in Alternate</p> <p>5 Site Product Sales when I was a part of that group, 11:56</p> <p>6 which was we were negotiating contracts with customers</p> <p>7 for the Hospital Products Division prod- -- cus- --</p> <p>8 contract -- products, the entire breadth of the</p> <p>9 product line, not just drugs; and that in return for</p> <p>10 those customers giving us a commitment to purchase 11:56</p> <p>11 those products, there was a price that they -- we were</p> <p>12 going to give them that was going to be less than</p> <p>13 catalog price.</p> <p>14 Q. (BY MR. WINTER) Okay.</p> <p>15 A. List price. The catalog list price. 11:56</p> <p>16 Q. Okay. And your experience and, indeed, your</p> <p>17 expectation would be that for the HPD portfolio of</p> <p>18 drugs and products, the prevailing market prices were</p> <p>19 substantially discounted from list price, correct?</p> <p>20 MS. CITERA: Objection to form. 11:56</p> <p>21 A. I know that there was a difference. I can't</p> <p>22 say that it was substantially -- substantially</p> <p>23 reduced, nor can I speak for the Hospital Products</p> <p>24 Division in general. I can only speak for the period</p> <p>25 of time that I was in Alternate Site Product Sales and 11:57</p>	<p style="text-align: right;">Page 148</p> <p>1 that the specific deal available to a specific</p> <p>2 customer would be dependent upon the size of the</p> <p>3 customer and the volume of its purchases of Abbott</p> <p>4 product, correct?</p> <p>5 A. Of the Hospital Products Division products -- 11:58</p> <p>6 Q. Yes.</p> <p>7 A. -- for Alternate Site Product Sales, yes.</p> <p>8 Q. As well as their history, their relationship</p> <p>9 with Abbott and how reliable they are, things of that</p> <p>10 nature, correct? 11:59</p> <p>11 A. Yes, for the hospital product -- for</p> <p>12 Alternate Site for Hospital Products Division</p> <p>13 products.</p> <p>14 Q. Right. But isn't it true that for all of</p> <p>15 Abbott's alternate site customers, the prices at which 11:59</p> <p>16 you would negotiate for a specific product -- and</p> <p>17 let's go back to our old friend Vancomycin -- we're</p> <p>18 going to fall within a pretty narrow range. One</p> <p>19 customer, if they are a large-volume purchaser, say,</p> <p>20 for example, PBI, who, as I understand it, was one of 11:59</p> <p>21 Abbott's largest customers in ASPS, so they probably</p> <p>22 moved a lot of product through to their members,</p> <p>23 correct?</p> <p>24 MS. CITERA: Objection to form.</p> <p>25 A. PBI was one of the largest customers that 11:59</p>
<p style="text-align: right;">Page 147</p> <p>1 what we did during our contract negotiations with</p> <p>2 customers.</p> <p>3 Q. (BY MR. WINTER) Well, during the time period</p> <p>4 that you were in Alternate Site Product Sales -- and</p> <p>5 just so there's no confusion, the products that 11:57</p> <p>6 Alternate Site Product Sales was marketing and</p> <p>7 selling, those were HPD products, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. So in your experience, during the time</p> <p>10 period that you were in ASPS, the prices that you 11:57</p> <p>11 would negotiate with Abbott's customers, those prices</p> <p>12 deteriorated over time, correct?</p> <p>13 MS. CITERA: Objection to form.</p> <p>14 A. Each contract that we negotiated for one of</p> <p>15 our customers was unique unto itself based on the 11:57</p> <p>16 commitment, what the customer was going to be</p> <p>17 purchasing and what we were doing with that specific</p> <p>18 customer. So -- and almost every one of those</p> <p>19 contracts had clauses written into them that there</p> <p>20 was -- we had the ability to take price increases on 11:58</p> <p>21 anniversaries because they were always -- they were</p> <p>22 most frequently multi-year contracts. So I don't know</p> <p>23 how we can say -- how -- how you can say that they</p> <p>24 were deteriorating over time.</p> <p>25 Q. (BY MR. WINTER) Okay. Well, I understand 11:58</p>	<p style="text-align: right;">Page 149</p> <p>1 Alternate Site Product Sales had, and PBI was a GPO.</p> <p>2 Q. (BY MR. WINTER) Right.</p> <p>3 A. They had -- they had a large base of members,</p> <p>4 and due to that fact, we were -- there was a great</p> <p>5 deal of business that we felt was there for buying the 12:00</p> <p>6 Alternate Site Product Sales products. Because of</p> <p>7 that, they were able to probably negotiate a better</p> <p>8 price for us -- with us for those products than</p> <p>9 another customer who wasn't going to be able to bring</p> <p>10 as much business. 12:00</p> <p>11 Q. Exactly.</p> <p>12 THE REPORTER: We have to change our</p> <p>13 videotape. I'm sorry. Stand by, please.</p> <p>14 THE VIDEOGRAPHER: The time is</p> <p>15 11:58 a.m. This is the end of Tape 3. We're going</p> <p>16 off the record.</p> <p>17 (Recess.)</p> <p>18 THE VIDEOGRAPHER: The time is now</p> <p>19 12:02 p.m. This is the beginning of Tape 4. We're</p> <p>20 back on the record. 12:03</p> <p>21 Q. (BY MR. WINTER) Okay. Ms. LeLon -- Leone.</p> <p>22 Pardon me. I'll try it again.</p> <p>23 Ms. Leone, you were just describing for</p> <p>24 me the fact that PBI was -- was a GPO --</p> <p>25 A. Uh-huh. 12:03</p>

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## FREDERICKS-CARROLL REPORTING

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Page 338	Page 340
<p>1 CHANGES AND SIGNATURE</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 STATE OF TEXAS )</p> <p>2 COUNTY OF TRAVIS )</p> <p>3 I, WILLIAM M. FREDERICKS, CSR No. 2392, do</p> <p>4 hereby certify that, pursuant to the agreement</p> <p>5 hereinabove set forth, there came before me on the</p> <p>6 18th day of July, 2007, at 9:02 o'clock a.m., in the</p> <p>7 offices of Jones Day, 77 West Wacker Drive, Chicago,</p> <p>8 Illinois, the following named person, to-wit: LYNN</p> <p>9 LEONE, who was by me duly sworn to testify to the</p> <p>10 truth and nothing but the truth of witness' knowledge</p> <p>11 touching and concerning the matters in controversy in</p> <p>12 this cause; that such witness was thereupon examined</p> <p>13 under oath, and the examination transcribed by</p> <p>14 computer-assisted transcription by me or under my</p> <p>15 supervision, and that the deposition is a true record</p> <p>16 of the testimony given by the witness.</p> <p>17 I further certify that I am neither attorney</p> <p>18 nor counsel for, nor related to or employed by, any of</p> <p>19 the parties to the action in which this deposition is</p> <p>20 taken and, further, that I am not a relative or</p> <p>21 employee of any attorney or counsel employed by the</p> <p>22 parties hereto, or financially interested in the</p> <p>23 action.</p> <p>24 That the amount of time used by each party at</p> <p>25 the deposition is as follows:</p>
Page 339	Page 341
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I, LYNN LEONE, have read the foregoing deposition</p> <p>6 and hereby affix my signature that same is true and</p> <p>7 correct, except as noted above.</p> <p>8</p> <p>9 LYNN LEONE</p> <p>10 THE STATE OF )</p> <p>11 COUNTY OF )</p> <p>12 Before me,</p> <p>13 on this day personally appeared LYNN LEONE,</p> <p>14 known to me (or proved to me under oath or through</p> <p>15 (description of</p> <p>16 identity card or other document) to be the person</p> <p>17 whose name is subscribed to the foregoing instrument</p> <p>18 and acknowledged to me that the executed the same for</p> <p>19 the purposes and consideration therein expressed.</p> <p>20 Given under my hand and seal of office this</p> <p>21 day of , 2007.</p> <p>22</p> <p>23</p> <p>24 NOTARY PUBLIC IN AND FOR</p> <p>25 THE STATE OF</p>	<p>1 MR. RAYMOND WINTER - 04:31</p> <p>2 MR. JARRETT ANDERSON - 02:05</p> <p>3</p> <p>4 IN WITNESS WHEREOF I have hereunto set my</p> <p>5 hand on this 8th day of August, A.D. 2007.</p> <p>6</p> <p>7</p> <p>8 WILLIAM M. FREDERICKS, Texas CSR 2392</p> <p>9 Expiration Date: 12/31/2007</p> <p>10 Firm Registration No. 82</p> <p>11 Fredericks-Carroll Reporting</p> <p>12 7800 Shoal Creek Boulevard</p> <p>13 Suite 200 W</p> <p>14 Austin, Texas 78757</p> <p>15 Telephone: (512) 477-9911</p> <p>16 (800) 234-3376</p> <p>17 Fax: (512) 345-1417</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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## FREDERICKS-CARROLL REPORTING

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<p style="text-align: right;">Page 342</p> <p>1 NO. D-1-GV-04-001286  2 THE STATE OF TEXAS ) IN THE DISTRICT COURT  3 )  4 ex rel. )  5 VEN-A-CARE OF THE )  6 FLORIDA KEYS, INC., )  7 Plaintiffs, )  8 VS. ) TRAVIS COUNTY, TEXAS  9 )  10 ABBOTT LABORATORIES INC., )  11 ABBOTT LABORATORIES, )  12 HOSPIRA, INC., and B. BRAUN )  13 MEDICAL INC., )  14 Defendant(s). ) 201ST JUDICIAL DISTRICT</p> <p>9  10 REPORTER'S CERTIFICATION  11 DEPOSITION OF LYNN LEONE  12 July 18th, 2007  13 I, WILLIAM M. FREDERICKS, Certified Shorthand  14 Reporter in and for the State of Texas, hereby certify  15 to the following:  16 That the witness, LYNN LEONE, was duly sworn by  17 the officer and that the transcript of the oral  18 deposition is a true record of the testimony given by  19 the witness;  20 That the deposition transcript was submitted on  21 August 8, 2007, to the witness or to the attorney for  22 the witness for examination, signature and return to  23 me by August 29, 2007;  24 That the amount of time used by each party at the  25 deposition is as follows:  MR. RAYMOND WINTER - 04:31</p>	<p style="text-align: right;">Page 344</p> <p>1 Certified to by me this 8th day of August, 2007.  2  3  4  5 WILLIAM M. FREDERICKS, Texas CSR 2392  6 Expiration Date: 12/31/2007  7 Firm Registration No. 82  8 Fredericks-Carroll Reporting  9 7719 Wood Hollow Drive, Suite 156  10 Austin, Texas 78731  11 Telephone: (512) 477-9911  12 (800) 234-3376  13 Fax: (512) 345-1417</p> <p>9  10 JOB NO. 2529  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 343</p> <p>1 That pursuant to information given to the  2 deposition officer at the time said testimony was  3 taken, the following includes counsel for all parties  4 of record:  5 MR. RAYMOND WINTER,  6 Attorney for Plaintiff State of Texas;  7 MR. JARRETT ANDERSON,  8 Attorney for the Relator;  9 MS. TONI-ANN CITERA,  10 Attorney for Defendants Abbott  11 Laboratories, Inc. and Hospira, Inc.;  12 MS. ANN M. ST. PETER-GRIFFITH,  13 Attorney for Plaintiff United States of  14 America;  15 MS. JENNIFER CONNOLLY,  16 Attorney for Plaintiff State of Arizona  17 and MDL Plaintiffs;  18 MR. ELISEO SISNEROS, Attorney for the  19 State of California.  20 I further certify that I am neither counsel for,  21 related to, nor employed by any of the parties or  22 attorneys in the actions in which this proceeding was  23 taken, and further that I am not financially or  24 otherwise interested in the outcome of the action.  25 Further certification requirements pursuant to  Rule 203 of TRCP will be certified to after they have  occurred.</p>	<p style="text-align: right;">Page 345</p> <p>1 FURTHER CERTIFICATION UNDER RULE 203 TRCP  2 The original deposition was/was not returned to  3 the deposition officer on August 29, 2007;  4 If returned, the attached Changes and Signature  5 page contains any changes and the reasons therefor;  6 If returned, the original deposition was delivered  7 to MR. RAYMOND WINTER, Custodial Attorney;  8 That \$ is the deposition officer's  9 charges to the Plaintiff(s) for preparing the original  10 deposition transcript and any copies of exhibits;  11 That the deposition was delivered in accordance  12 with Rule 203.3, and that a copy of this certificate  13 was served on all parties shown herein on and filed  14 with the Clerk.  15 Certified to by me this day of  16 , 2007.  17  18  19  20 WILLIAM M. FREDERICKS, Texas CSR 2392  21 Expiration Date: 12/31/2007  22 Firm Registration No. 82  23 Fredericks-Carroll Reporting  24 7719 Wood Hollow Drive, Suite 156  25 Austin, Texas 78731  Telephone: (512) 477-9911  (800) 234-3376  Fax: (512) 345-1417</p> <p>20  21  22  23  24  25 JOB NO. 2529</p>

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## FREDERICKS-CARROLL REPORTING

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# EXHIBIT 46

Leone, Lynn E.

January 17, 2008

Chicago, IL

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X  
In re: PHARMACEUTICAL INDUSTRY ) MDL DOCKET NO.  
AVERAGE WHOLESALE PRICE ) CIVIL ACTION  
LITIGATION. ) 01CV12257-PBS  
-----X

DEPOSITION OF LYNN E. LEONE  
JANUARY 17, 2008

The videotaped deposition of LYNN E.  
LEONE, called by the United States for examination,  
Taken pursuant to subpoena and pursuant to the  
Federal Rules of Civil Procedure for the United  
States District Courts pertaining to the taking of  
depositions, taken before Rachel F. Gard, Certified  
Shorthand Reporter, at 77 West Wacker Drive, Suite  
3500, Chicago, Illinois, commencing at 9:05 a.m. on  
the 17th day of January, A.D., 2008.

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Leone, Lynn E.

January 17, 2008

Chicago, IL

<p style="text-align: right;">Page 194</p> <p>1 insurers and Medicaid. Is that also true for  2 Medicare as well?  3 MS. CITERA: Objection to form.  4 BY THE WITNESS:  5 A. Children's Memorial had no Medicare  6 patients because they were all kids.  7 Q. Okay. Can you explain Item 7, then?  8 MS. CITERA: Objection to form.  9 BY THE WITNESS:  10 A. I believe that part of the reason that  11 they changed -- that it was changing was that  12 they wanted to expand their services to be -- to  13 cover more than just children. So that's why the  14 name was CM Healthcare Resources when previously  15 it had been Children's Memorial. And they  16 changed it to CM Healthcare Resources so that it  17 wouldn't be just focused on kids, and they were  18 then going to start expanding their home infusion  19 services and try to expand their patient  20 population and not just be focused on a pediatric  21 population.  22 Q. Okay. Did Abbott ever use its provider</p>	<p style="text-align: right;">Page 196</p> <p>1 BY THE WITNESS:  2 A. Again, I was not involved in the  3 renegotiation of the contract with Children's  4 where all of this changed. But as I said before,  5 when we -- when we did contracts -- we worked  6 with our legal counsel when we did these  7 contracts. And this was -- All I was -- All I  8 was working on at this point was the  9 implementation of the change.  10 Q. Did you ask any questions about whether  11 or not this was -- whether or not Abbott's  12 provider number could be used in such a way?  13 MS. CITERA: Objection to form.  14 BY THE WITNESS:  15 A. Since the billings were being done in  16 Abbott's name using Abbott's provider number to  17 Illinois Medicaid, and based on -- based on the  18 renegotiations and what we did -- Well, to answer  19 your question, I did not have any discussions  20 with anyone.  21 Q. Okay. You relied upon the people who  22 negotiated the contract to verify that -- I</p>
<p style="text-align: right;">Page 195</p> <p>1 number to bill Medicare on behalf of CM  2 Healthcare Resources, to your recollection?  3 A. To my recollection, that never  4 happened.  5 Q. Okay. But Abbott did use its provider  6 number to bill Medicaid?  7 A. But they billed in Abbott's name, not  8 in CM Healthcare Resources' name. So those bills  9 were in Abbott's name. Abbott submitted the  10 claims as Abbott for those patients.  11 Q. Okay. And then paid a fee to  12 Children's Memorial?  13 MS. CITERA: Objection to form.  14 BY THE WITNESS:  15 A. If I recall the contract correctly,  16 there was -- there was something that went back  17 to Children's, although I don't remember what it  18 was or how the contract was structured.  19 Q. Prior to approving this arrangement,  20 did you check with anyone concerning the legality  21 of Abbott's ability to do that?  22 MS. CITERA: Objection to form.</p>	<p style="text-align: right;">Page 197</p> <p>1 apologize for the horn out there -- to verify  2 that everything was kosher under this  3 arrangement?  4 MS. CITERA: Objection to the form.  5 BY THE WITNESS:  6 A. Yes. I relied that during that  7 negotiation process, our -- the people who were  8 negotiating the contracts were working with our  9 legal counsel.  10 Q. Do you recall who negotiated the  11 contract?  12 A. No, I do not.  13 Q. Who was -- Who would have been some of  14 the folks who may have been negotiating the  15 contract at that point in time? Who was in the  16 Contract Marketing component of Home Infusion at  17 that time?  18 MS. CITERA: Objection to form.  19 BY THE WITNESS:  20 A. It would have been either Dave Brincks  21 or Kathy Riddle as my manager, and I can't  22 remember when Dave left and Kathy came in. And</p>

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Leone, Lynn E.

January 17, 2008

Chicago, IL

<p style="text-align: right;">Page 302</p> <p>1 Average Wholesale Price (AWP) information to non-</p> <p>2 managed care customers." Did I read that</p> <p>3 correctly?</p> <p>4 A. Correct.</p> <p>5 Q. Given that statement, is your memory</p> <p>6 refreshed that sharing AWP information with</p> <p>7 customers by Abbott personnel is a violation of</p> <p>8 Abbott's current policies?</p> <p>9 MS. CITERA: Same objections as before.</p> <p>10 BY THE WITNESS:</p> <p>11 A. It was their policies in December of</p> <p>12 2003, so ...</p> <p>13 Q. So at least as of that time, it became</p> <p>14 a violation of their policies to share AWP,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. Was sharing AWP information with</p> <p>18 customers a violation of any Abbott policy prior</p> <p>19 to December of 2003?</p> <p>20 MS. CITERA: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. When I was in Alternate Site Product</p>	<p style="text-align: right;">Page 304</p> <p>1 requirement of the bid.</p> <p>2 MR. ANDERSON: Objection,</p> <p>3 nonresponsive.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. When you instructed personnel not to,</p> <p>6 quote, discuss AWP, did you instruct them not to</p> <p>7 share AWP information with customers in the</p> <p>8 context of a bid response or a response to a</p> <p>9 request for proposal?</p> <p>10 A. What I told my team was the only time</p> <p>11 to include AWP was if it was a requirement of</p> <p>12 completing the bid. Otherwise, if it was an</p> <p>13 optional field, not to complete it.</p> <p>14 Q. So in the instances where a customer of</p> <p>15 Abbott's required that AWP information be</p> <p>16 submitted, Abbott did provide AWP and doing so</p> <p>17 was not considered a violation of any Abbott</p> <p>18 policy, correct?</p> <p>19 MS. CITERA: Objection to form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't -- I don't -- I did not know if</p> <p>22 there was a policy in place at that time that</p>
<p style="text-align: right;">Page 303</p> <p>1 Sales we told our sales force not to discuss or</p> <p>2 talk about AWP with their customers. As I</p> <p>3 previously said, I don't recall that we had it</p> <p>4 documented in a procedure or policy anywhere.</p> <p>5 Q. When you told these personnel not to</p> <p>6 discuss AWP, did you also tell them not to</p> <p>7 include AWP in the context of a bid response or</p> <p>8 response to a request for proposal?</p> <p>9 A. Well -- And, again, my understanding</p> <p>10 had always been that we only provided AWP in our</p> <p>11 Contract Marketing department when it was</p> <p>12 something that was specifically requested as a</p> <p>13 condition of completing the bid proposal and if</p> <p>14 we did not complete -- include AWP, then we would</p> <p>15 not be able to -- we would not be considered.</p> <p>16 The other piece of this is Debbie</p> <p>17 Longley left Alternate Site Product Sales 19- in</p> <p>18 late 1996 -- I'm sorry, late -- sometime in 1997.</p> <p>19 And she may have provided AWP prior to my being</p> <p>20 in the department. But after I came into the</p> <p>21 department, the rule of thumb was that we would</p> <p>22 not include AWP unless it was a specific</p>	<p style="text-align: right;">Page 305</p> <p>1 said not to.</p> <p>2 Q. Accordingly, providing AWP was not a</p> <p>3 violation, correct?</p> <p>4 MS. CITERA: Objection to form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. It was not part of our standard</p> <p>7 business practices to discuss AWP, so the only</p> <p>8 time it happened was if it was a requirement for</p> <p>9 completing a bid.</p> <p>10 Q. When you say "standard practices," what</p> <p>11 do you refer to?</p> <p>12 A. It wasn't part of how we were trying to</p> <p>13 sell our products. We were trying to sell our</p> <p>14 products based on the depth and breadth of the</p> <p>15 product line, what buying products from Abbott --</p> <p>16 the whole idea of the services, the service and</p> <p>17 products that -- quality that Abbott could bring</p> <p>18 to the table and not based on the spread of the</p> <p>19 AWP.</p> <p>20 Q. So the standard practices were, so to</p> <p>21 speak, the aspirations of Abbott in selling</p> <p>22 products, correct?</p>

77 (Pages 302 to 305)

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# EXHIBIT 47



Martins, Deborah Longley  
Chicago, IL

August 31, 2007

Page 1

IN THE UNITED STATES  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE )  
PRICE LITIGATION ) MDL No. 1456  
 ) Civil Action No.  
THIS DOCUMENT RELATES TO: ) 01-CV-12257-PBS  
 )  
ALL CASES )  
 ) Judge Patti B. Saris

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ORAL AND VIDEOTAPED DEPOSITION  
OF DEBORAH LONGLEY MARTINS  
August 31, 2007

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Martins, Deborah Longley  
Chicago, IL

August 31, 2007

<p style="text-align: right;">Page 246</p> <p>1 THE WITNESS: I don't recall any 2 particular visits, no. 3 BY MR. ANDERSON: 4 Q. Does this document appear to be slides 5 from a PowerPoint presentation? 6 A. Looks that way, yes. 7 Q. And it looks like, from the title, that 8 it was a presentation to Abbott Labs by PBI; 9 correct? 10 A. Yes. 11 Q. Then if you could, flip to the last -- 12 second-to-last -- no, last page of the document. 13 A. Second-to-last page? 14 Q. The last page. 15 A. Last page? 16 Q. Do you see a page there titled "Member 17 Savings Report"? 18 A. Yes. 19 Q. And it appears to be in a section of some 20 software or potentially a spreadsheet; correct? 21 A. Looks that way. 22 Q. And there is a column titled "AWP" toward</p>	<p style="text-align: right;">Page 248</p> <p>1 other as to whether you had an understanding of 2 this type of analysis back when you were in 3 contract marketing? 4 A. No, I didn't. 5 Q. You're -- you're fairly certain that you 6 did not have that understanding? 7 A. I don't believe I did, no. 8 Q. Did you ever become aware of any policy 9 at Abbott, whether written or unwritten, to not 10 discuss AWP's or reimbursement with customers? 11 A. I don't believe there has ever been any 12 written policy. I know there has been verbal 13 communication that you should not be discussing 14 this with customers, yes. 15 Q. Can you recall generally when that verbal 16 instruction was first provided? 17 A. I don't remember when it was first 18 provided. I know I've had it provided in other 19 jobs that I've had at Abbott. 20 Q. Do you believe you received that type of 21 instruction back in '95, '96, or '97, when you were 22 in contract marketing?</p>
<p style="text-align: right;">Page 247</p> <p>1 the right-hand side; correct? 2 A. Yes. 3 Q. And then next to that is a column titled 4 "Spread"; correct? 5 A. Yes. 6 Q. Do you ever recall having an 7 understanding that customers of Abbott or members 8 of buying groups that were customers of Abbott's 9 conducted this type of analysis? 10 MR. COLE: Object to the form. 11 THE WITNESS: No. 12 BY MR. ANDERSON: 13 Q. Are you able to testify that back in the 14 '90s you were not aware that customers of Abbott or 15 members of buying group customers of Abbott's 16 conducted this type of analysis? 17 MR. COLE: I'll object to the form. 18 THE WITNESS: I don't remember being 19 presented stuff like this. 20 BY MR. ANDERSON: 21 Q. I understand that you're saying you don't 22 remember. I'm saying can you say one way or the</p>	<p style="text-align: right;">Page 249</p> <p>1 A. I can't pinpoint to it, but I would want 2 to say yes. 3 Q. And what were you told as to why those 4 types of discussions about AWP or reimbursement 5 should not occur between Abbott and customers? 6 A. And, again, I'm getting fuzzy as to when 7 I've had these discussions, but my understanding is 8 you can't advertise for the purpose of making a 9 sale what someone is going to make off of buying 10 your product through the reimbursement process. 11 Q. That's the basic substance of what you 12 learned about this instruction not to discuss AWP 13 or reimbursement? 14 A. Yes. 15 Q. Do you recall who provided this 16 instruction? 17 A. Again, I've heard it in different 18 formats. 19 Q. Let me limit it back in the '95, '96, or 20 potentially '97 time frame, when you were in 21 contract marketing. Do you remember who would have 22 provided that instruction, if anyone?</p>

63 (Pages 246 to 249)

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Martins, Deborah Longley  
Chicago, IL

August 31, 2007

<p style="text-align: right;">Page 250</p> <p>1 A. I don't know.</p> <p>2 Q. Did you ask any questions about that</p> <p>3 instruction?</p> <p>4 A. No.</p> <p>5 Q. When you received that instruction, did</p> <p>6 you stop including AWP's on the bids or other</p> <p>7 communications to customers?</p> <p>8 MR. COLE: Object to the form.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. ANDERSON:</p> <p>11 Q. Why not?</p> <p>12 A. I couldn't tell you; just was part of the</p> <p>13 format, so I had never questioned the format.</p> <p>14 Q. So despite instruction not to discuss</p> <p>15 AWP's or reimbursement, as far as you know, Abbott</p> <p>16 continued including AWP information in written</p> <p>17 communications?</p> <p>18 MR. COLE: Object to the form.</p> <p>19 THE WITNESS: As far as I know.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. I think you testified this morning that</p> <p>22 you recall preparing some documents known as</p>	<p style="text-align: right;">Page 252</p> <p>1 MR. ANDERSON: You're welcome.</p> <p>2 (Witness examines document.)</p> <p>3 THE WITNESS: Does it look like the</p> <p>4 format? Is that what you're asking me?</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. Yes, ma'am.</p> <p>7 A. Looks like one of the formats, sure.</p> <p>8 MR. ANDERSON: This is good news for you.</p> <p>9 Let's go off the record. I'm going to</p> <p>10 review my notes and other documents, and we may be</p> <p>11 getting close. At least I'm going to be passing</p> <p>12 the witness shortly.</p> <p>13 THE WITNESS: Okay.</p> <p>14 THE VIDEOGRAPHER: We are off the record</p> <p>15 at 2:24 p.m.</p> <p>16 (Brief pause.)</p> <p>17 THE VIDEOGRAPHER: We are back on the</p> <p>18 record at 2:32 p.m.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. Just a couple of last questions, ma'am.</p> <p>21 If you could, take a look at what's been marked in</p> <p>22 this case as Plaintiff's Exhibit 1337, a one-page</p>
<p style="text-align: right;">Page 251</p> <p>1 proposal analyses; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Can you describe as a general matter what</p> <p>4 a proposal analyses consisted of?</p> <p>5 A. Depends on what type of proposal you're</p> <p>6 talking about, but I think we had some examples</p> <p>7 here that showed volumes purchased previous year,</p> <p>8 and these would be anniversary increases that I'm</p> <p>9 talking about, but what the price was, what we were</p> <p>10 proposing it to be, what the net effect is on the</p> <p>11 overall contract based on those increases.</p> <p>12 Q. And was it your testimony this morning</p> <p>13 that -- that those proposal analyses included AWP</p> <p>14 information as well?</p> <p>15 A. Yes.</p> <p>16 Q. Does Exhibit 364 look like an example of</p> <p>17 a proposal analyses that was prepared in Abbott</p> <p>18 contract marketing?</p> <p>19 MR. COLE: Object to the form.</p> <p>20 Do you have an extra copy, Jarrett?</p> <p>21 MR. ANDERSON: I do. It's there, Jeremy.</p> <p>22 MR. COLE: Oh, thank you.</p>	<p style="text-align: right;">Page 253</p> <p>1 document Bates-labeled TXABT 061729.</p> <p>2 (Whereupon Deposition Plaintiff's</p> <p>3 Exhibit 1337 was marked as requested.)</p> <p>4 (Witness examines document.)</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. ANDERSON:</p> <p>7 Q. Now, if I could -- I apologize, but I've</p> <p>8 got to share this with you because it's the only</p> <p>9 copy.</p> <p>10 A. Okay.</p> <p>11 Q. Looking at the bottom of this document,</p> <p>12 will you agree that appears to be like an original</p> <p>13 e-mail as a part of this e-mail thread?</p> <p>14 A. I'm sorry.</p> <p>15 (Witness examines document.)</p> <p>16 THE WITNESS: Looks like it, yes.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. And specifically it's an e-mail from</p> <p>19 Annemarie Renick to Harry Adams, with a copy to</p> <p>20 you, titled "RX WAC &amp; LINK CHANGES," August 14,</p> <p>21 1996; correct?</p> <p>22 A. Yes.</p>

64 (Pages 250 to 253)

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Martins, Deborah Longley  
Chicago, IL

August 31, 2007

<p style="text-align: right;">Page 270</p> <p>1</p> <p>2 I, DEBORAH LONGLEY MARTINS, state that I</p> <p>3 have read the foregoing transcript of the testimony</p> <p>4 given by me at my deposition on the 31st day of</p> <p>5 August, 2007, and that said transcript constitutes a</p> <p>6 true and correct record of the testimony given by me</p> <p>7 at said deposition except as I have so indicated on</p> <p>8 the errata sheets provided herein.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 DEBORAH LONGLEY MARTINS</p> <p>13 No corrections (Please initial) _____</p> <p>14 Number of errata sheets submitted _____</p> <p>15</p> <p>16 SUBSCRIBED AND SWORN to</p> <p>17 before me this _____ day</p> <p>18 of _____, 2007.</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public</p> <p>22</p>	<p style="text-align: right;">Page 272</p> <p>1 deposition was pursuant to notice and that there were</p> <p>2 present at the taking of said deposition the</p> <p>3 appearances as heretofore noted.</p> <p>4 I further certify that I am not a relative</p> <p>5 or employee or attorney or counsel, nor a relative or</p> <p>6 employee of such attorney or counsel for any of the</p> <p>7 parties hereto, nor interested directly or indirectly</p> <p>8 in the outcome of this action.</p> <p>9 IN TESTIMONY WHEREOF, I have hereunto set</p> <p>10 my hand and affixed my notarial seal this 10th day of</p> <p>11 September, 2007.</p> <p>12</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 ROBIN M. CHIMNIAK, CSR</p> <p>17 License No. 084-001999</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 271</p> <p>1 STATE OF ILLINOIS )</p> <p>2 ) SS:</p> <p>3 COUNTY OF DuPAGE )</p> <p>4 I, ROBIN M. CHIMNIAK, a notary public</p> <p>5 within and for the County of DuPage and State of</p> <p>6 Illinois, do hereby certify that heretofore, to wit,</p> <p>7 on the 31st day of August, 2007, personally appeared</p> <p>8 before me DEBORAH LONGLEY MARTINS, a witness in a</p> <p>9 certain cause now pending and undetermined in the</p> <p>10 United States District Court.</p> <p>11 I further certify that the witness was by</p> <p>12 me first duly sworn to testify the truth, the whole</p> <p>13 truth and nothing but the truth in the cause</p> <p>14 aforesaid; that the testimony then given by the said</p> <p>15 witness was reported stenographically by me in the</p> <p>16 presence of said witness and was thereafter</p> <p>17 transcribed under my personal direction, and the</p> <p>18 foregoing is a true and complete transcript of the</p> <p>19 testimony so given by the said witness as aforesaid.</p> <p>20 The signature of the witness to the</p> <p>21 foregoing deposition was not waived.</p> <p>22 I further certify that the taking of this</p>	<p style="text-align: right;">Page 273</p> <p>1</p> <p>2</p> <p>3</p>

69 (Pages 270 to 273)

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# EXHIBIT 48

Loughman, Mary (Molly)

February 15, 2008

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MDL NO. 1456

Master File No. 01-12257-PBS

Judge Patti B. Saris

Magistrate Judge - Marianne Bowler

IN RE: PHARMACEUTICAL INDUSTRY

AVERAGE WHOLESALE PRICE LITIGATION

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THIS DOCUMENT RELATES TO:

State of California, ex rel. Ven-A-Care v.

Abbott Laboratories, Inc., et al.,

CASE #1-03-cv-11226-PBS

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VIDEOTAPE DEPOSITION OF:

MARY (MOLLY) LOUGHMAN

Friday, February 15, 2008

9:00 AM to 3:30 PM

Columbia, South Carolina

Reported by: Jane G. LaPorte

Registered Professional Reporter

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Loughman, Mary (Molly)

February 15, 2008

<p style="text-align: right;">Page 90</p> <p>1 wanted to know what it meant and what it was about?</p> <p>2 A. It could have been, yes.</p> <p>3 Q. But one way or the other, the -- either</p> <p>4 Ms. Haines brought it up to you, or you heard it at</p> <p>5 some point from the time that you joined Abbott</p> <p>6 Labs, until the date of the conversation, and asked</p> <p>7 her about it; is that fair?</p> <p>8 A. I guess the reason why I -- because</p> <p>9 heard -- heard.</p> <p>10 Q. Uh-huh.</p> <p>11 A. Yeah. I don't -- I just don't -- I don't</p> <p>12 remember, to be exact, I don't remember.</p> <p>13 Q. And what did -- what did Ms. Haines tell</p> <p>14 you about AWP?</p> <p>15 A. Just what the initials stood for and then</p> <p>16 that was it.</p> <p>17 Q. Did that answer your questions?</p> <p>18 A. At that point I was so new, yes.</p> <p>19 Q. Okay.</p> <p>20 A. Uh-huh.</p> <p>21 Q. And did you understand, at that point,</p> <p>22 that AWP was a basis for reimbursement?</p>	<p style="text-align: right;">Page 92</p> <p>1 little.</p> <p>2 Q. And what do you recall discussing with</p> <p>3 Mr. Elliott about AWP?</p> <p>4 A. Actually, he brought it up.</p> <p>5 Q. And what did he say?</p> <p>6 A. And -- it was just told to -- it wasn't</p> <p>7 just me as an individual, it was not -- it was as a</p> <p>8 group, as a Southeast district group, that we were</p> <p>9 not to talk about AWP with our customers; end of</p> <p>10 story.</p> <p>11 Q. Did Mr. Elliott tell you why you couldn't</p> <p>12 talk about AWP?</p> <p>13 A. No.</p> <p>14 Q. Did anyone ask: Why can't we talk about</p> <p>15 AWP?</p> <p>16 A. I guess it was his tone, a tone in one's</p> <p>17 voice.</p> <p>18 It was kind of like: This is what I say</p> <p>19 and -- no. I do not recall anyone questioning:</p> <p>20 Well why?</p> <p>21 No, you will not.</p> <p>22 Q. Okay.</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. SCANNAPIECO: Objection; form.</p> <p>2 A. No.</p> <p>3 Q. When was the next time that you heard</p> <p>4 about AWP?</p> <p>5 A. (No response.)</p> <p>6 Q. Or heard AWP discussed?</p> <p>7 A. I don't even recall.</p> <p>8 Q. Is it a term that you have heard</p> <p>9 throughout your career at Abbott?</p> <p>10 MR. SCANNAPIECO: Objection; form.</p> <p>11 A. Yes. I had heard that, yes.</p> <p>12 Q. So, from time to time, it would come up</p> <p>13 in conversations; is that your testimony?</p> <p>14 MR. SCANNAPIECO: Objection; form.</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall any discussions with your</p> <p>17 district manager -- we'll start with Mr. Elliott --</p> <p>18 any discussions with Mr. Elliott about AWP?</p> <p>19 A. Yes.</p> <p>20 Q. And about how many occasions do you</p> <p>21 recall discussions with Mr. Elliott?</p> <p>22 A. Rare. It was rare. Very, very, very</p>	<p style="text-align: right;">Page 93</p> <p>1 A. So, okay. No is no.</p> <p>2 Q. And by that point, did you have an</p> <p>3 understanding of what he meant when he said: You</p> <p>4 will not talk about AWP with customers?</p> <p>5 MR. SCANNAPIECO: Objection; form.</p> <p>6 A. Other than the answer -- other than the</p> <p>7 communication to us, was -- is that you don't talk</p> <p>8 about it. It's not something that you discuss.</p> <p>9 Q. Had you had occasions between or before</p> <p>10 Mr. Elliott gave that instruction to the sales rep</p> <p>11 in your district, to discuss AWP with customers?</p> <p>12 A. To discuss --</p> <p>13 THE WITNESS: I'm sorry, Becky, you will</p> <p>14 have to repeat that.</p> <p>15 MS. FORD: Sure.</p> <p>16 Q. Before Mr. Elliott gave you the</p> <p>17 instruction -- you and the other sales reps in your</p> <p>18 district not to discuss AWP with customer --</p> <p>19 A. Before.</p> <p>20 Q. -- had you had occasions to discuss AWP</p> <p>21 with customers?</p> <p>22 A. I am not sure of the timeline; so, I</p>

24 (Pages 90 to 93)

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Loughman, Mary (Molly)

February 15, 2008

<p style="text-align: right;">Page 126</p> <p>1 -- I can't say if it was Jeani Haines or not, I 2 cannot say that. 3 Q. When you say: One or the other, do you 4 know Ms. Haines or Ms. Finkel? 5 A. Yes. 6 Q. So, you learned about the red book from 7 one of those two individuals? 8 A. In other words, you -- I want you to 9 clarify "learned" for me. 10 Q. Well, when you first heard of the Red 11 Book and gained some understanding of what it was, 12 was that from Ms. Haines or Ms. Finkel? 13 A. I never really understood exactly at that 14 time. 15 Q. Okay. 16 A. You know, in other words, -- no. So, 17 yes; that is correct. One or the other; Chris 18 Finkel or Jenny Haines. 19 Q. Was where you heard the term from? 20 A. Correct. 21 Q. And you see here that sentence that we 22 just read from Mr. Kipperman to the sales force, it</p>	<p style="text-align: right;">Page 128</p> <p>1 you also mean that you don't have that understanding 2 today? 3 MR. SCANNAPIECO: Objection; form. 4 A. I don't know anything about 5 reimbursement; so, I don't know if there is a 6 correlation, other than what you just read to me. 7 Q. But have you learned, at some point 8 during your career with Abbott or Hospira, that 9 there is a correlation between AWP and 10 reimbursement? 11 MR. SCANNAPIECO: Objection; form. 12 A. No. 13 Q. Okay. 14 A. No. 15 Q. For what reason would a customer be 16 interested in the AWP on an Abbott product, a 17 customer such as MediHome Infusion? 18 A. That, I don't know. Why would they be 19 interested? 20 That is that side of business, if you 21 will, meaning that they are running their own 22 business, that they know about, I do not.</p>
<p style="text-align: right;">Page 127</p> <p>1 says that: Red Book quotes AWP for reimbursement 2 purposes. 3 A. Uh-huh. 4 Q. Was that your understanding of Red Book? 5 MR. SCANNAPIECO: Objection; form. 6 A. No. 7 Q. Did you know that Red Book quoted AWP for 8 reimbursement purposes? 9 MR. SCANNAPIECO: Objection; form. 10 A. I only knew that Red Book listed average 11 wholesale price. 12 I did not and do not know, if -- that 13 there is a correlation with reimbursement. 14 Q. The beginning of that sentence says: 15 That in the beginning of April, Abbott took a list 16 price increase, this also has an affect on our AWP. 17 Did you understand that Abbott's list 18 price had an affect on the AWP on Abbott's products? 19 MR. SCANNAPIECO: Objection; form. 20 A. No, no. 21 Q. When you indicated that you did not know 22 that AWP was quoted for reimbursement purposes, did</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. Okay. 2 A. I don't know why MediHome Infusion, or to 3 what extent that that would be for them how -- I 4 have no idea. 5 Q. When you had your discussions with 6 Ms. Haines and Ms. Finkel -- 7 A. Uh-huh. 8 Q. -- is it fair to characterize those 9 discussions that you testified about today as you 10 were learning the Alternate Site business? 11 MR. SCANNAPIECO: Objection; form. 12 A. I was new; yes, yes. 13 Q. And you testified that you asked 14 questions about: What is a AWP; is that right? 15 A. I did ask the question what the initials 16 meant, yes. 17 Q. Did you ask similar questions about terms 18 that you had heard as you came into the inside sales 19 rep job? 20 MR. SCANNAPIECO: Objection; form. 21 A. Similar terms, did you say? 22 Q. Terms used by your customers or other --</p>

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# EXHIBIT 49

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESAL ) MDL No. 1456  
PRICE LITIGATION ) Civil Action No.  
 ) 01-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 )  
United States of America, ) Hon. Patti Saris  
ex rel. Ven-a-Care of the )  
Florida Keys, Inc., v. )  
Abbott Laboratories, Inc., )  
and Hospira, Inc. )  
CIVIL ACTION NO. 06-11337-PBS )

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESAL ) MDL No. 1456  
PRICE LITIGATION ) Civil Action No.  
 ) 01-CV-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 ) Judge Patti B. Saris  
State of Arizona v. Abbott )  
Labs., et al. )  
Civil Action No. 06-CV-11069-PBS )

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ORAL AND VIDEOTAPED DEPOSITION OF

TED DENNIS LYJAK

May 31, 2007

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1 negotiated our contract and award at the contract  
2 price.  
3 Q. And did PharMerica respond to that?  
4 A. I recall them saying that they would not be  
5 able to convert as much business as they committed to.  
6 Q. And what did you do as a result?  
7 A. We told them that they need to act in the  
8 best interest of their own company and we would not be  
9 able to even discuss the subject of AWP going forward.  
10 Q. Did you report the incident to your  
11 supervisor?  
12 A. Yes, I did.  
13 Q. Okay. And is that -- was that still  
14 Mr. Baker?  
15 A. Yes, it was.  
16 Q. Okay. And how did you report that  
17 information to him?  
18 A. I verbally told him of the conversation.  
19 Q. And what was his response?  
20 A. We're not to talk about AWP.  
21 Q. That was his response to you?  
22 A. Yes.  
23 Q. Okay. Following your conversation with  
24 Mr. Baker, did you do anything else as a result of  
25 learning that PharMerica was not going to convert as

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1 much of their business as originally anticipated?  
2 A. No, I -- I took no further action.  
3 Q. Okay. And I believe that you mentioned also  
4 that MHA had discussed AWP with you, is that correct?  
5 A. That is correct.  
6 Q. Okay. And what was the context in which that  
7 conversation took place?  
8 A. I recall seeing it in an RFP, request for  
9 bid, on MHA, and they included a column for AWP; and  
10 when I was reviewing the requirements of the RFP, the  
11 director of purchasing said that we'll be required to  
12 fill out the AWP column, at which point I said that  
13 Abbott's policy and practice is not to have any  
14 discussions on AWP, and we basically eliminated that  
15 column from our bid.  
16 Q. So to the best of your recollection, when the  
17 request for proposal was completed by Abbott and  
18 returned to MHA, it did not contain the AWP  
19 information, is that --  
20 A. I know that for a fact.  
21 Q. Okay. Other than the discussions you've told  
22 me about with Mr. Baker and Ms. Dawson, do you recall  
23 any other discussions with your colleagues at Abbott  
24 about AWP?  
25 A. I recall a discussion with one of my other

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1 NAMs in regards to a letter that Abbott received from  
2 Omni Care.  
3 Q. And who was the NAM?  
4 A. Jeff Balzer.  
5 Q. And was Omni Care one of Mr. Balzer's  
6 customers?  
7 A. Yes.  
8 Q. Okay. And when did the discussion with  
9 Mr. Balzer take place?  
10 A. To the best of my recollection, it would be  
11 that 2002 time period.  
12 Q. And how did the discussion of AWP come up in  
13 your conversation with Mr. Balzer?  
14 A. We were sent a letter -- Jeff was sent a  
15 letter by Omni Care telling Abbott that as a result of  
16 some changes that Abbott did to their price, WAC  
17 price, that -- that basically they were entitled to  
18 compensation.  
19 Q. Did Mr. Balzer come to you for advice on how  
20 to handle the situation?  
21 A. No.  
22 Q. Okay. In what context did Mr. Balzer bring  
23 this to your attention?  
24 A. It was in casual conversation as we discussed  
25 accounts.

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1 Q. Did he seem concerned about the letter from  
2 Omni Care?  
3 MS. TABACCHI: Object to the form.  
4 A. Yes.  
5 Q. (BY MS. FORD) What was your response to him?  
6 A. It's out of our control.  
7 Q. Is that the only other conversation that you  
8 recall with a colleague about AWP?  
9 A. Yes.  
10 Q. Do you understand there to be a relationship  
11 between Abbott's list price and AWP?  
12 MS. TABACCHI: Object to the form.  
13 A. I do not understand any relationship between  
14 Abbott's list price and their AW -- and AWP.  
15 Q. (BY MS. FORD) Have you heard the term "the  
16 spread"?  
17 A. Yes, I have.  
18 Q. And what -- what do you understand the term  
19 "the spread" to mean?  
20 A. My understanding is that it is the difference  
21 between AWP and contract price.  
22 Q. And when do you first recall hearing the term  
23 "the spread"?  
24 A. I -- in the same conversation when I first  
25 heard about it from Option Care.

23 (Pages 86 to 89)

## FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

9b8b8489-a76f-4580-b66f-3fc05922193a

<p style="text-align: right;">Page 90</p> <p>1 Q. Did you understand customers -- that some of</p> <p>2 your customers were making purchasing decisions based</p> <p>3 upon the spread?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 A. Yes.</p> <p>6 Q. (BY MS. FORD) And which customers were</p> <p>7 those?</p> <p>8 A. Option Care, MHA and PharMerica.</p> <p>9 Q. Any others?</p> <p>10 A. No.</p> <p>11 Q. Did the term "the spread" come up in your</p> <p>12 conversation with Mr. Baker about AWP?</p> <p>13 MS. TABACCHI: Object to the form.</p> <p>14 A. Yes.</p> <p>15 Q. (BY MS. FORD) And what did you discuss about</p> <p>16 the spread?</p> <p>17 A. Basically his instructions were that as</p> <p>18 representatives of Abbott, we were not to discuss or</p> <p>19 get in any conversation -- or avoid conversations</p> <p>20 about AWP or spread.</p> <p>21 Q. Did you ask him why?</p> <p>22 A. No.</p> <p>23 Q. Did you inquire of anyone within Abbott why</p> <p>24 you couldn't talk about AWP with your customers?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 92</p> <p>1 directive.</p> <p>2 Q. Okay. I'm going to switch gears for just a</p> <p>3 minute, and I think we can probably finish up in the</p> <p>4 next 30 minutes or so and then take our lunch break.</p> <p>5 I want to ask --</p> <p>6 THE REPORTER: We have 14 minutes on the</p> <p>7 videotape.</p> <p>8 MS. FORD: Okay. Let's see if --</p> <p>9 MS. TABACCHI: Or 14.</p> <p>10 MS. FORD: -- we can do it in 14.</p> <p>11 Q. (BY MS. FORD) When you first started with</p> <p>12 Abbott as the Manager of Distributor Relations in</p> <p>13 1996, did you receive any formal training?</p> <p>14 MS. TABACCHI: Object to the form.</p> <p>15 A. No.</p> <p>16 Q. (BY MR. FORD) Okay. During your time period</p> <p>17 as Manager of Distributor Relations, did you receive</p> <p>18 any training, formal training?</p> <p>19 A. Yes.</p> <p>20 Q. And what types of training?</p> <p>21 A. I recall receiving training as a National</p> <p>22 Account Manager from Lynn Leone, our manager of</p> <p>23 Contract Marketing, in regards to new government</p> <p>24 regulations and the way Abbott would interpret those</p> <p>25 that would affect the way we offered incentives to</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Were you curious at all if your customers</p> <p>2 were interested in AWP and they're asking you about</p> <p>3 AWP why Abbott can't talk about it?</p> <p>4 A. When Pete first explained it to me, he said</p> <p>5 it had something to do with reimbursement, which is</p> <p>6 something that we never got involved in. We only</p> <p>7 offered contract pricing and were awarded business, or</p> <p>8 at least felt we could control getting awards on</p> <p>9 business based on our product offering at the contract</p> <p>10 price.</p> <p>11 Q. I'm just trying to understand. If it's</p> <p>12 important to your customers and -- and customers are</p> <p>13 asking you for this information and it's going to make</p> <p>14 your job easier in selling products to them, why you</p> <p>15 wouldn't be curious as to why you couldn't discuss it?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 A. The messages that I delivered to my customers</p> <p>18 periodically were both good and bad, and as a</p> <p>19 representative of the company, I just felt that it was</p> <p>20 part of the rules under which we needed to play.</p> <p>21 Q. (BY MR. FORD) I understand it was part of</p> <p>22 the rules. I'm just trying to inquire whether you</p> <p>23 ever questioned that decision or questioned that</p> <p>24 directive?</p> <p>25 A. I never questioned that decision or</p>	<p style="text-align: right;">Page 93</p> <p>1 distributors in the form of free goods.</p> <p>2 Q. And when did that training occur?</p> <p>3 A. 2000. And then, secondly, I recall a formal</p> <p>4 training by Abbott on Abbott's position on AWP. It</p> <p>5 was a required webcast that we needed to take and, in</p> <p>6 essence, explained the relationship, or at least in</p> <p>7 general terms that there was a relationship between</p> <p>8 AWP and reimbursement and the fact that as</p> <p>9 representatives of the company we were not to engage</p> <p>10 in any discussions on that or ever use that in any of</p> <p>11 our business transactions.</p> <p>12 Q. And when did that training take place?</p> <p>13 A. 2002. The 2001, 2002 time period.</p> <p>14 Q. Okay. And you indicated that it was a</p> <p>15 webcast. Does that mean that you watched it on a</p> <p>16 computer?</p> <p>17 A. Yes, we watched it on a computer. It may not</p> <p>18 have been called a webcast at the time --</p> <p>19 Q. Okay.</p> <p>20 A. -- but we watched it on the computer. It was</p> <p>21 a computer training module.</p> <p>22 Q. Okay. So it wasn't a presentation being</p> <p>23 given by someone live that you were watching on the</p> <p>24 computer, is that correct?</p> <p>25 A. That is correct.</p>

24 (Pages 90 to 93)

## FREDERICKS-CARROLL REPORTING

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1  
2  
3  
4  
5 I, TED DENNIS LYJAK, have read the foregoing  
6 deposition and hereby affix my signature that same is  
7 true and correct, except as noted above.  
8

9 TED DENNIS LYJAK  
10 THE STATE OF )  
11 COUNTY OF )  
12 Before me,  
13 on this day personally appeared TED DENNIS LYJAK,  
14 known to me (or proved to me under oath or through  
15 (description of  
16 identity card or other document) to be the person  
17 whose name is subscribed to the foregoing instrument  
18 and acknowledged to me that the executed the same for  
19 the purposes and consideration therein expressed.  
20 Given under my hand and seal of office this  
21 day of , 2007.  
22  
23

24 NOTARY PUBLIC IN AND FOR  
25 THE STATE OF

Page 239

1 STATE OF TEXAS )  
2 COUNTY OF TRAVIS )  
3 I, WILLIAM M. FREDERICKS, CSR 2392, do hereby  
4 certify that, pursuant to the agreement hereinabove  
5 set forth, there came before me on the 31st day of  
6 May, 2007, at 9:06 o'clock a.m., in the offices of  
7 Jones Day, 77 West Wacker Drive, Suite 3500, Chicago,  
8 Illinois, the following named person, to-wit: TED  
9 DENNIS LYJAK, who was by me duly sworn to testify to  
10 the truth and nothing but the truth of witness'  
11 knowledge touching and concerning the matters in  
12 controversy in this cause; that such witness was  
13 thereupon examined under oath, and the examination  
14 transcribed by computer-assisted transcription by me  
15 or under my supervision, and that the deposition is a  
16 true record of the testimony given by the witness.  
17 I further certify that I am neither attorney  
18 nor counsel for, nor related to or employed by, any of  
19 the parties to the action in which this deposition is  
20 taken and, further, that I am not a relative or  
21 employee of any attorney or counsel employed by the  
22 parties hereto, or financially interested in the  
23 action.  
24 That the amount of time used by each party at  
25 the deposition is as follows:

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1 Ms. Rebecca Ford - 03:06  
2 Ms. Margaret Moore - 01:03  
3 Mr. Jarrett Anderson - 01:58  
4 IN WITNESS WHEREOF I have hereunto set my  
5 hand on this 14th day of June , A.D. 2007.  
6

7 WILLIAM M. FREDERICKS, Texas CSR 2392  
8 Expiration Date: 12/31/2008  
9 Firm Registration No. 82  
10 Fredericks-Carroll Reporting  
11 7800 Shoal Creek Boulevard  
12 Suite 200 W  
13 Austin, Texas 78757  
14 Telephone: (512) 477-9911  
15 (800) 234-3376  
16 Fax: (512) 345-1417  
17  
18  
19  
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21  
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25

JOB NO. 2426

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1 NO. D-1-GV-04-001286  
2 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
3 )  
4 ex rel. )  
5 VEN-A-CARE OF THE )  
6 FLORIDA KEYS, INC., )  
7 Plaintiffs, )  
8 )  
9 VS. ) TRAVIS COUNTY, TEXAS  
10 )  
11 ABBOTT LABORATORIES INC., )  
12 ABBOTT LABORATORIES, )  
13 HOSPIRA, INC., and B. BRAUN )  
14 MEDICAL INC., )  
15 Defendant(s). ) 201ST JUDICIAL DISTRICT  
16  
17  
18  
19  
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25

REPORTER'S CERTIFICATION  
DEPOSITION OF TED DENNIS LYJAK  
May 31, 2007

1 I, WILLIAM M. FREDERICKS, Certified Shorthand  
2 Reporter in and for the State of Texas, hereby certify  
3 to the following:  
4 That the witness, TED DENNIS LYJAK, was duly sworn  
5 by the officer and that the transcript of the oral  
6 deposition is a true record of the testimony given by  
7 the witness;  
8 That the deposition transcript was submitted on  
9 June 14, 2007, to the witness or to the attorney for  
10 the witness for examination, signature and return to  
11 me by July 5, 2007;  
12 That the amount of time used by each party at the  
13 deposition is as follows:  
14 Ms. Rebecca Ford - 03:06  
15  
16  
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18  
19  
20  
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22  
23  
24  
25

61 (Pages 238 to 241)

## FREDERICKS-CARROLL REPORTING

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<p style="text-align: right;">Page 242</p> <p>1 Mr. Jarrett Anderson - 01:58  2 That pursuant to information given to the  3 deposition officer at the time said testimony was  4 taken, the following includes counsel for all parties  5 of record:  6 MR. RAYMOND WINTER and  7 MS. MARGARET MOORE,  8 Attorney for Plaintiff State of Texas;  9 MR. JARRETT ANDERSON,  10 Attorney for the Relator;  11 MS. TINA TABACCHI,  12 Attorney for Defendants Abbott  13 Laboratories, Inc. and Hospira, Inc.  14 MS. REBECCA FORD,  15 Attorney for Plaintiff United States of  16 America  17 MR. CHRISTOPHER STUART,  18 Attorney for Plaintiff State of Arizona  19 and MDL Plaintiffs  20 MR. ELISEO SISNEROS, Attorney for the  21 State of California  22  23 I further certify that I am neither counsel for,  24 related to, nor employed by any of the parties or  25 attorneys in the actions in which this proceeding was  taken, and further that I am not financially or  otherwise interested in the outcome of the action.  Further certification requirements pursuant to  Rule 203 of TRCP will be certified to after they have  occurred.</p>	<p style="text-align: right;">Page 244</p> <p>1 FURTHER CERTIFICATION UNDER RULE 203 TRCP  2 The original deposition was/was not returned to  3 the deposition officer on July 5, 2007;  4 If returned, the attached Changes and Signature  5 page contains any changes and the reasons therefor;  6 If returned, the original deposition was delivered  7 to Ms. Rebecca Ford, Custodial Attorney;  8 That \$ is the deposition officer's  9 charges to the Plaintiff(s) for preparing the original  10 deposition transcript and any copies of exhibits;  11 That the deposition was delivered in accordance  12 with Rule 203.3, and that a copy of this certificate  13 was served on all parties shown herein on and filed  14 with the Clerk.  15 Certified to by me this day of  16 , 2007.  17  18  19  20 WILLIAM M. FREDERICKS, Texas CSR 2392  21 Expiration Date: 12/31/2007  22 Firm Registration No. 82  23 Fredericks-Carroll Reporting  24 7719 Wood Hollow Drive, Suite 156  25 Austin, Texas 78731  Telephone: (512) 477-9911  (800) 234-3376  Fax: (512) 345-1417  JOB NO. 2426</p>
<p style="text-align: right;">Page 243</p> <p>1 Certified to by me this 14th day of June, 2007.  2  3  4 WILLIAM M. FREDERICKS, Texas CSR 2392  5 Expiration Date: 12/31/2007  6 Firm Registration No. 82  7 Fredericks-Carroll Reporting  8 7719 Wood Hollow Drive, Suite 156  9 Austin, Texas 78731  10 Telephone: (512) 477-9911  11 (800) 234-3376  12 Fax: (512) 345-1417  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	

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## FREDERICKS-CARROLL REPORTING

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# EXHIBIT 50



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESale ) MDL No. 1456  
PRICE LITIGATION ) Civil Action  
 ) No. 01-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 )  
United States of America, ) Hon. Patti Saris  
ex rel. Ven-a-Care of the )  
Florida Keys, Inc., v. )  
Abbott Laboratories, Inc., )  
and Hospira, Inc. )  
CIVIL ACTION NO. 06-11337-PBS )

\*\*\*\*\*

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESale ) MDL No. 1456  
PRICE LITIGATION ) Civil Action  
 ) No. 01-CV-12257-PBS  
 )  
THIS DOCUMENT RELATES TO: )  
 ) Judge Patti B. Saris  
State of Arizona v. Abbott )  
Labs., et al. )  
Civil Action No. 06-CV-11069-PBS )

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ORAL AND VIDEOTAPED DEPOSITION OF

ROBERT JAMES LYMAN

June 27, 2007

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<p style="text-align: right;">Page 34</p> <p>1 Q. (BY MR. RIKLIN) Okay. And -- and what other 2 responsibilities did you have in connection with 3 overseeing the contracts? 4 MS. TABACCHI: Object to the form. 5 A. Those were the primary responsibilities. 09:39 6 Q. (BY MR. RIKLIN) Okay. And with regard to 7 the critical-care products, what was your 8 responsibility from 1999 to 2001? 9 A. Oversaw the contracts for the critical-care 10 products. 09:40 11 Q. The same -- the same responsibilities as with 12 the Berlex products? 13 A. Yes. 14 Q. Okay. And then your responsibility 15 overseeing government contracts, what did that -- what 09:40 16 did those responsibilities entail? 17 A. That's overseeing the Federal Supply Schedule 18 contract and the Federal Ceiling Price contract. 19 Q. Did you -- during that time period, 1999 to 20 2001, did you have a -- Abbott employees that you 09:40 21 supervised? 22 A. Yes. 23 Q. How many? 24 A. For the critical-care products, it was a 25 manager and two analysts. 09:40</p>	<p style="text-align: right;">Page 36</p> <p>1 government operations, and about the same time I 2 picked up responsibility for Medicaid. 3 Q. And when you say you picked up responsibility 4 for Medicaid, what were those responsibilities? 5 A. That was overseeing the Medicaid reporting, 09:43 6 which was AMP and best-price reporting on a quarterly 7 basis and the Public Health Service price reporting. 8 Q. Okay. The best-price reporting on a 9 quarterly basis. What was the other one? 10 A. Average manufacturer's price, best price and 09:43 11 Public Health Service pricing. 12 Q. What did Public Health Service pricing 13 include? 14 MS. TABACCHI: Object to the form. 15 A. That was a calculation to take AMP and any 09:43 16 rebates that are paid under the Medicaid program and 17 to calculate a price to report under the Public Health 18 Service agreement. 19 Q. (BY MR. RIKLIN) To report to the government? 20 A. Yes. 09:44 21 Q. Who did you report to beginning in 1999 when 22 you assumed responsibility for Berlex products, 23 critical-care products and overseeing government 24 contracts? 25 A. It was Pat Keeley. 09:44</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Who was the manager? 2 A. The manager actually came in fairly late. I 3 had two. One was Martine Cadichon. 4 Q. How do you spell that last name? 5 A. C-a-d-i-c-h-o-n. 09:41 6 Q. Okay. 7 A. Roughly. 8 Q. And who were the two analysts? 9 A. Carol Felgenhauer, and I'm -- there was a 10 gentleman working for me, and his name escapes me at 09:41 11 this point in time. 12 Q. And what were the critical-care products that 13 you were selling? 14 A. It was capital equipment for Sv02, which is 15 blood oxygenation, and the catheters associated with 09:41 16 that and disposable transducers and pressure-tubing 17 kits. 18 Q. All right. And then -- okay. We've -- have 19 we covered your responsibilities regarding government 20 contracts? That included federal supply contracts and 09:42 21 Federal Ceiling Price contracts? 22 A. Up -- up through 2001, yes. 23 Q. All right. How did your responsibilities 24 change in 2001? 25 A. Well, they moved me over completely to 09:42</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Pat Keeley. 2 Did that change in 2001 when you moved 3 completely to government operations? 4 A. Yes. 5 Q. Who did you report to then? 09:44 6 A. It was Mike Sellers. 7 Q. Okay. What was his title? 8 A. He was general manager contract marketing. 9 Q. Okay. And you -- you had respons- -- 10 complete responsibility for government operations 09:45 11 until 2004? 12 MS. TABACCHI: Object to the form. 13 Q. (BY MR. RIKLIN) Is that correct? 14 A. Yes. 15 Q. Until the spinoff? 09:45 16 MS. TABACCHI: Object to the form. 17 Q. (BY MR. RIKLIN) When was the spinoff? 18 A. I'm -- about three years ago, or maybe it's 19 been four. I'm not really sure. 20 Q. 2003, 2004 time frame? 09:45 21 A. It was in that range, yes. 22 Q. Okay. Were -- were you involved in the -- 23 was there a transition team in connection with the 24 Hos- -- Hospira spinoff? 25 MS. TABACCHI: Object to the form. 09:45</p>

10 (Pages 34 to 37)

## FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

Page 302	Page 304
<p>1 CHANGES AND SIGNATURE</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 STATE OF TEXAS )</p> <p>2 COUNTY OF TRAVIS )</p> <p>3 I, WILLIAM M. FREDERICKS, CSR No. 2392, do</p> <p>4 hereby certify that, pursuant to the agreement</p> <p>5 hereinabove set forth, there came before me on the</p> <p>6 27th day day of June, 2007, at 9:07 o'clock a.m., in</p> <p>7 the offices of Jones Day, 77 West Wacker Drive,</p> <p>8 Suite 3500, Chicago, Illinois, the following named</p> <p>9 person, to-wit: ROBERT JAMES LYMAN, who was by me duly</p> <p>10 sworn to testify to the truth and nothing but the</p> <p>11 truth of witness' knowledge touching and concerning</p> <p>12 the matters in controversy in this cause; that such</p> <p>13 witness was thereupon examined under oath, and the</p> <p>14 examination transcribed by computer-assisted</p> <p>15 transcription by me or under my supervision, and that</p> <p>16 the deposition is a true record of the testimony given</p> <p>17 by the witness.</p> <p>18 I further certify that I am neither attorney</p> <p>19 nor counsel for, nor related to or employed by, any of</p> <p>20 the parties to the action in which this deposition is</p> <p>21 taken and, further, that I am not a relative or</p> <p>22 employee of any attorney or counsel employed by the</p> <p>23 parties hereto, or financially interested in the</p> <p>24 action.</p> <p>25 That the amount of time used by each party at</p>
Page 303	Page 305
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I, ROBERT JAMES LYMAN, have read the foregoing</p> <p>6 deposition and hereby affix my signature that same is</p> <p>7 true and correct, except as noted above.</p> <p>8</p> <p>9 ROBERT JAMES LYMAN</p> <p>10 THE STATE OF )</p> <p>11 COUNTY OF )</p> <p>12 Before me,</p> <p>13 on this day personally appeared ROBERT JAMES LYMAN,</p> <p>14 known to me (or proved to me under oath or through</p> <p>15 (description of</p> <p>16 identity card or other document) to be the person</p> <p>17 whose name is subscribed to the foregoing instrument</p> <p>18 and acknowledged to me that the executed the same for</p> <p>19 the purposes and consideration therein expressed.</p> <p>20 Given under my hand and seal of office this</p> <p>21 day of , 2007.</p> <p>22</p> <p>23</p> <p>24 NOTARY PUBLIC IN AND FOR</p> <p>25 THE STATE OF</p>	<p>1 the deposition is as follows:</p> <p>2 Mr. Rand J. Riklin - 04:45</p> <p>3 Mr. Raymond C. Winter - 01:26</p> <p>4</p> <p>5 IN WITNESS WHEREOF I have hereunto set my</p> <p>6 hand on this 9th day of July, A.D. 2007.</p> <p>7</p> <p>8</p> <p>9 WILLIAM M. FREDERICKS, Texas CSR 2392</p> <p>10 Expiration Date: 12/31/2007</p> <p>11 Firm Registration No. 82</p> <p>12 Fredericks-Carol Reporting</p> <p>13 7800 Shoal Creek Boulevard</p> <p>14 Suite 200 W</p> <p>15 Austin, Texas 78757</p> <p>16 Telephone: (512) 477-9911</p> <p>17 (800) 234-3376</p> <p>18 Fax: (512) 345-1417</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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## FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

<p style="text-align: right;">Page 306</p> <p>1 NO. D-1-GV-04-001286  2 THE STATE OF TEXAS ) IN THE DISTRICT COURT  3 )  4 ex rel. )  5 VEN-A-CARE OF THE )  6 FLORIDA KEYS, INC., )  7 Plaintiffs, )  8 )  9 VS. ) TRAVIS COUNTY, TEXAS  10 )  11 ABBOTT LABORATORIES INC., )  12 ABBOTT LABORATORIES, )  13 HOSPIRA, INC., and B. BRAUN )  14 MEDICAL INC., )  15 Defendant(s). ) 201ST JUDICIAL DISTRICT</p> <p>16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">REPORTER'S CERTIFICATION  DEPOSITION OF ROBERT JAMES LYMAN  June 27, 2007</p> <p>I, WILLIAM M. FREDERICKS, Certified Shorthand  Reporter in and for the State of Texas, hereby certify  to the following:  That the witness, ROBERT JAMES LYMAN, was duly  sworn by the officer and that the transcript of the  oral deposition is a true record of the testimony  given by the witness;  That the deposition transcript was submitted on  July 9, 2007, to the witness or to the attorney for  the witness for examination, signature and return to  me by July 30, 2007;  That the amount of time used by each party at the  deposition is as follows:  Mr. Rand J. Riklin - 04:45</p>	<p style="text-align: right;">Page 308</p> <p>1 Certified to by me this 9th day of July, 2007.  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p>WILLIAM M. FREDERICKS, Texas CSR 2392  Expiration Date: 12/31/2007  Firm Registration No. 82  Fredericks-Carol Reporting  7719 Wood Hollow Drive, Suite 156  Austin, Texas 78731  Telephone: (512) 477-9911  (800) 234-3376  Fax: (512) 345-1417</p> <p>JOB NO. 2493</p>
<p style="text-align: right;">Page 307</p> <p>1 That pursuant to information given to the  2 deposition officer at the time said testimony was  3 taken, the following includes counsel for all parties  4 of record:  5 MR. RAYMOND WINTER,  6 Attorney for Plaintiff State of Texas;  7 MR. RAND RIKLIN,  8 Attorney for the Relator;  9 MS. TINA TABACCHI,  10 Attorney for Defendants Abbott  11 Laboratories, Inc. and Hospira, Inc.;  12 MS. ANN M. ST. PETER-GRIFFITH,  13 Attorney for Plaintiff United States of  14 America;  15 MR. CHRISTOPHER STUART,  16 Attorney for Plaintiff State of Arizona  17 and MDL Plaintiffs;  18 MR. ELISEO SISNEROS, Attorney for the  19 State of California;  20 I further certify that I am neither counsel for,  21 related to, nor employed by any of the parties or  22 attorneys in the actions in which this proceeding was  23 taken, and further that I am not financially or  24 otherwise interested in the outcome of the action.  25 Further certification requirements pursuant to  Rule 203 of TRCP will be certified to after they have  occurred.</p>	<p style="text-align: right;">Page 309</p> <p>1 FURTHER CERTIFICATION UNDER RULE 203 TRCP  2 The original deposition was/was not returned to  3 the deposition officer on July 30, 2007;  4 If returned, the attached Changes and Signature  5 page contains any changes and the reasons therefor;  6 If returned, the original deposition was delivered  7 to Mr. Rand J. Riklin, Custodial Attorney;  8 That \$ is the deposition officer's  9 charges to the Plaintiff(s) for preparing the original  10 deposition transcript and any copies of exhibits;  11 That the deposition was delivered in accordance  12 with Rule 203.3, and that a copy of this certificate  13 was served on all parties shown herein on and filed  14 with the Clerk.  15 Certified to by me this day of  16 , 2007.  17  18  19  20  21  22  23  24  25</p> <p>WILLIAM M. FREDERICKS, Texas CSR 2392  Expiration Date: 12/31/2007  Firm Registration No. 82  Fredericks-Carol Reporting  7719 Wood Hollow Drive, Suite 156  Austin, Texas 78731  Telephone: (512) 477-9911  (800) 234-3376  Fax: (512) 345-1417</p> <p>JOB NO. 2493 wmf</p>

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## FREDERICKS-CARROLL REPORTING

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# EXHIBIT 51

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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL ) MDL DOCKET NO.  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01CV12257-PBS

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Videotaped Deposition of P. LOREEN  
MERSHIMER, at 77 West Wacker Drive,  
Chicago, Illinois, commencing at  
9:00 a.m. on Thursday,  
August 23, 2007, before Donna M.  
Kazaitis, RPR, CSR No. 084-003145.

Henderson Legal Services  
202-220-4158

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<p style="text-align: right;">Page 42</p> <p>1 development of that compound.</p> <p>2 In-licensing products, I spent a</p> <p>3 considerable amount of time looking at products to</p> <p>4 bring into our portfolio.</p> <p>5 I had responsibility for the</p> <p>6 marketing team and the sales team, well, the</p> <p>7 marketing team was one person.</p> <p>8 Q. Who was that person?</p> <p>9 A. Bill, I don't remember his last name</p> <p>10 right now. He left the company. I'd have to</p> <p>11 think.</p> <p>12 Q. And how many people were on the sales</p> <p>13 team?</p> <p>14 A. At that time it was probably</p> <p>15 twenty-three people, thirty, thirty-five. I don't</p> <p>16 know. It was small.</p> <p>17 Q. Do you remember their names?</p> <p>18 A. Gai Pelli, Dana Caller. I'd have to</p> <p>19 really think.</p> <p>20 Q. Was Mike Heggie one of your</p> <p>21 subordinates?</p> <p>22 A. Mike Heggie was over on reimbursement,</p>	<p style="text-align: right;">Page 44</p> <p>1 renal reimbursement issues?</p> <p>2 A. Yes.</p> <p>3 Q. Any other responsibilities?</p> <p>4 A. No. I mean the big focus was really</p> <p>5 R&amp;D. We had a new product to get through, and I</p> <p>6 was working on, spent a lot of time with LaJolla</p> <p>7 Pharmaceuticals because I was working on a drug</p> <p>8 for lupus nephritis.</p> <p>9 Q. Approximately how many drugs was the</p> <p>10 renal department responsible for?</p> <p>11 A. It was responsible for Calcijex, and</p> <p>12 then we were working on Zemplar.</p> <p>13 Q. Were you at all involved in pricing of</p> <p>14 products within the renal area?</p> <p>15 A. I was involved in thinking through price</p> <p>16 increases for those products, yes.</p> <p>17 Q. What were your responsibilities with</p> <p>18 regard to pricing or thinking through price</p> <p>19 increases?</p> <p>20 A. As part of the forecasting, I would</p> <p>21 determine or along with other people what would be</p> <p>22 the percentage price increase we would take each</p>
<p style="text-align: right;">Page 43</p> <p>1 and he supported my business along with other</p> <p>2 businesses.</p> <p>3 Q. Meaning he supported renal and other</p> <p>4 components of the hospital business?</p> <p>5 A. No. At that time he was over in</p> <p>6 Alternate Site and I was in Alternate Site.</p> <p>7 Q. Was renal a component part of Alternate</p> <p>8 Site?</p> <p>9 A. Yes.</p> <p>10 Q. So Mr. Heggie provided reimbursement</p> <p>11 services for Alt Site as well as, for renal as</p> <p>12 well as other components of Alt Site?</p> <p>13 A. Yes.</p> <p>14 Q. What were the other components of Alt</p> <p>15 Site that he supported?</p> <p>16 A. You know, I don't remember in detail</p> <p>17 because that was set up before I came in. So I</p> <p>18 don't remember.</p> <p>19 I know he assisted Mike Sellers and</p> <p>20 Pete Baker, but I'm not sure, you know, what, I</p> <p>21 don't know the details behind that.</p> <p>22 Q. But he reported to you with regard to</p>	<p style="text-align: right;">Page 45</p> <p>1 year and when we might want to consider taking</p> <p>2 that price increase.</p> <p>3 Q. Which price would be increased?</p> <p>4 A. Calcijex, we would increase the Calcijex</p> <p>5 price.</p> <p>6 Q. Would that be Calcijex prices on</p> <p>7 contracts?</p> <p>8 A. It would be increasing our list price.</p> <p>9 Q. And would the list price on Calcijex</p> <p>10 increase every year?</p> <p>11 A. I believe so. I mean most of our</p> <p>12 proprietary products we increased our price every</p> <p>13 year.</p> <p>14 Q. Well, when you were there during your</p> <p>15 tenure in renal, do you recall whether it</p> <p>16 increased every year?</p> <p>17 A. I don't recall if I increased it every</p> <p>18 year or not.</p> <p>19 Q. Do you remember what factors were</p> <p>20 considered in making a decision to increase the</p> <p>21 price for Calcijex?</p> <p>22 A. Usually CPI, what was the Consumer Price</p>

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<p style="text-align: right;">Page 46</p> <p>1 Index going up, and what was the general 2 healthcare price index going up. 3 Q. Did you have any responsibilities 4 regarding reporting Calcijex pricing? 5 A. No. I did not. 6 MR. DALY: Object to the form. Go 7 ahead. 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Who did? 10 MR. DALY: Object to the form. 11 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Go ahead. You can answer the question. 14 From time to time Mr. Daly may assert an 15 objection. And unless he provides an instruction 16 to you not to answer, you can go ahead and answer 17 the question. 18 A. I don't know who did. I would -- I 19 don't know. 20 Q. Was the list price for Calcijex the 21 price that was charged to contract customers of 22 Abbott?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And I'm sorry, I don't think, did I ask 2 you who you reported to when you were the head of 3 renal? 4 A. I reported to Don Robertson. 5 Q. And what was Mr. Robertson's position? 6 A. Vice president of Alternate Site. As 7 you can guess, I just don't worry about formal 8 titles. 9 Q. And then when you moved on to the 10 Hospital Business Sector to work with the IV 11 solutions, when you transitioned to that role were 12 you automatically promoted to divisional vice 13 president? 14 A. Yes, I was. 15 Q. And when you became a divisional vice 16 president, who did you report to? 17 A. Rick Gonzalez. 18 Q. And what was Mr. Gonzalez's position? 19 A. He was the president of HPD. 20 Q. So you reported directly up to the 21 president? 22 A. Yes, I did.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Yes. Most of the time that would be the 2 price, yes. I don't think we had a lot of 3 products under contract. I think we charged them 4 a list price, you know. I don't remember the 5 details behind that. 6 Q. Well, how did your sales force operate 7 in the renal department? 8 A. Could you explain what you mean by 9 "operate"? 10 Q. Sure. Let me clarify. 11 Would your sales department enter 12 into sales contracts -- 13 A. Oh, no, because this was a proprietary 14 product. 15 Q. Okay. Can you explain what you mean by 16 that? 17 A. Well, when you have a patent on a 18 product, it's very unusual that you would want to 19 discount that product, unless you had a lot of 20 competition. 21 Q. So this wasn't a generic product? 22 A. No.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Did you supervise anyone in your 2 capacity as divisional vice president when you 3 oversaw the IV solutions? 4 A. Yes. I would have general managers 5 responsible for the various business. 6 Q. Do you remember who those general 7 managers were? 8 A. Bob Fellicelli was in charge of 9 solutions, Ed Hayman, Tom Moore. And then some of 10 those people would move in and out of various 11 positions, and I'm not sure the times because I 12 was over them a number of different years. So I'm 13 not sure when they moved if they moved when they 14 were reporting to me or reporting to Mary. 15 Q. Okay. For Mr. Hayman what products did 16 he oversee? 17 A. Ed Hayman oversaw our electronic drug 18 delivery systems. 19 Q. Can we call that EDDS? 20 A. Yes. We can call it EDDS. 21 Q. For short. 22 And Mr. Moore?</p>

13 (Pages 46 to 49)

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<p style="text-align: right;">Page 78</p> <p>1 someone has said hey, here's common terms. But I  2 don't remember.  3 BY MS. ST. PETER-GRIFFITH:  4 Q. Did you ever see the term in any  5 communications that you've received at Abbott?  6 A. I've seen the general term "AWP" in  7 several communications.  8 Q. Do you remember what they were, what the  9 communications were?  10 A. I believe I would see it in an  11 overarching training, like here's how J codes are  12 and here's what DRGs are and here's what hospital  13 codes are. So you would see it in that type of a  14 overarching presentation.  15 Q. Any other communications that you can  16 think of?  17 A. You know, we would submit our list  18 prices to the Contract Marketing team. So I'm not  19 sure as you see things coming back from Contract  20 Marketing or you see things coming back from  21 government publications if I would see the  22 terminology.</p>	<p style="text-align: right;">Page 80</p> <p>1 it would have been the various country managers  2 who would submit prices to their, if you could get  3 a price increase to the governments of the  4 different countries.  5 For the marketing managers, it  6 depended upon if you were under a proprietary  7 product or if you were under the ones that were  8 bidded to hospitals. Because if you were under  9 the big hospital bids, then Contract Marketing  10 would work on that.  11 If you were sitting there and you  12 had a proprietary product, then you might say I  13 want to take a three and a half, four percent  14 price increase, because that's what CPI is  15 running, you know. And they would give you here's  16 the negotiations on CPI and you will say let's  17 take a three and a half, four percent, price  18 increase.  19 Q. When you were the divisional vice  20 president overseeing the Hospital Business  21 Sector's IV solutions, would either you or your  22 general managers submit proposed list prices to</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. When you say you would submit your list  2 prices to the Contract Marketing team, what do you  3 mean? Do you mean the general managers?  4 A. The general managers would have list  5 prices you would submit to the Contract Marketing  6 team -- well, that's probably not the right  7 terminology.  8 Q. Go ahead.  9 A. I'm trying to think through what the  10 right terminology is.  11 I'm not sure because that was  12 really handled by the Contract Marketing team.  13 Q. When you say that list prices were  14 submitted to the Contract Marketing team --  15 A. Maybe I should really say price  16 increases.  17 Q. Price increases, okay.  18 Who would be responsible for  19 setting price increases to list price?  20 A. It depended upon the job you were in and  21 the time span and who you were with.  22 So for like Abbott International,</p>	<p style="text-align: right;">Page 81</p> <p>1 the Contract Marketing team?  2 A. No. We were really focused only on our  3 net price and we were focused on bids to  4 hospitals.  5 Q. When you say "net price," what do you  6 mean?  7 A. We were focused on the price that we  8 were going to, minus the, you know, the price that  9 we would receive after the discount that we would  10 offer a hospital.  11 Q. Do you know whether any of the pricing  12 decisions that were made by your staff when you  13 were overseeing the Hospital Business Sector IV  14 solutions and that grouping of products, do you  15 know whether any of the pricing decisions that you  16 made impacted the Home Infusion or Alternate Site  17 areas of HPD?  18 A. No. I mean they were small. They  19 wouldn't have, you know, I would make -- no. I  20 don't have any idea on that. I'd make my  21 decisions based on what we needed to do to win the  22 bids against Baxter or McGaw.</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 Q. But your decisions did not -- when you</p> <p>2 say you would make your decisions, you're talking</p> <p>3 about decisions regarding net price as opposed to</p> <p>4 list price?</p> <p>5 A. Correct.</p> <p>6 Q. I just want to make sure that we're</p> <p>7 absolutely clear. Did either you or your general</p> <p>8 managers have any responsibility for setting list</p> <p>9 prices when you were in the Hospital Business</p> <p>10 Sector overseeing the IV solutions, EDDS, IV kits,</p> <p>11 in that product line?</p> <p>12 MR. DALY: Object to the form. Go</p> <p>13 ahead.</p> <p>14 THE WITNESS: No. We did not, with the</p> <p>15 exception if we would have a new product, and the</p> <p>16 new product usually the list price would be the</p> <p>17 price that we would start off with a new</p> <p>18 proprietary product. We wouldn't offer a</p> <p>19 discount. So that would be a list price.</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Are you familiar with the term "WAC"?</p> <p>22 A. I've heard about it, but I don't really</p>	<p style="text-align: right;">Page 84</p> <p>1 wholesaler acquisition.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. Okay. And what does that mean,</p> <p>4 wholesaler acquisition?</p> <p>5 MR. DALY: Object to the form.</p> <p>6 THE WITNESS: You know, I'm not really</p> <p>7 sure because we had people who specialized in</p> <p>8 that.</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Who were those individuals?</p> <p>11 A. They were over in the Contract Marketing</p> <p>12 organization.</p> <p>13 Q. Do you remember their names?</p> <p>14 A. I figured you were going to ask me that</p> <p>15 next.</p> <p>16 I believe Harry Adams. I'm trying</p> <p>17 to think if I know anybody else. I'm not, the</p> <p>18 only one I can think of is Harry Adams.</p> <p>19 Q. Okay. "List price," what is list price?</p> <p>20 A. That's the price I charge a customer who</p> <p>21 doesn't have a contract or a price if I have a</p> <p>22 proprietary product I charge everybody in the</p>
<p style="text-align: right;">Page 83</p> <p>1 know it or understand it.</p> <p>2 Q. Do you have any understanding as to what</p> <p>3 it means, or is it just a term that you've heard?</p> <p>4 A. My understanding is it means wholesaler</p> <p>5 acquisition.</p> <p>6 MS. ST. PETER-GRIFFITH: We need to</p> <p>7 change the tape. So why don't we take a brief</p> <p>8 minute here.</p> <p>9 THE WITNESS: Okay.</p> <p>10 THE VIDEOGRAPHER: We are off the record</p> <p>11 at 10:38 a.m. with the end of Tape No. 1.</p> <p>12 (WHEREUPON a recess was taken.)</p> <p>13 THE VIDEOGRAPHER: We are back on the</p> <p>14 record at 10:39 a.m. with the start of Tape No. 2.</p> <p>15 THE WITNESS: Okay.</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Ms. Mershimer, just before we had the</p> <p>18 tape change we were discussing the definition of</p> <p>19 the term "WAC," and you indicated that you</p> <p>20 understood it to mean wholesaler acquisition cost?</p> <p>21 MR. DALY: Object to the form.</p> <p>22 THE WITNESS: I thought it was the</p>	<p style="text-align: right;">Page 85</p> <p>1 United States.</p> <p>2 Q. For nonproprietary products do you know</p> <p>3 how often list price is charged?</p> <p>4 A. It would really vary by the product and</p> <p>5 it would vary by when competitors would go in and</p> <p>6 out of business.</p> <p>7 So, for example, I might have a</p> <p>8 product where the competitor goes out of business</p> <p>9 and I only have half the hospitals and Baxter has</p> <p>10 the other half of the hospitals. In that case the</p> <p>11 other hospitals would pay the list price when</p> <p>12 Baxter would back order or if they would be out of</p> <p>13 business for six months, nine months, twelve</p> <p>14 months.</p> <p>15 Q. Any other time that you can think of</p> <p>16 when Abbott would charge list price?</p> <p>17 A. Oh, I charge list price for most of the</p> <p>18 proprietary products all the time.</p> <p>19 Q. I should have qualified. I meant in a</p> <p>20 nonproprietary product setting.</p> <p>21 A. When we're between contracts, if someone</p> <p>22 has left our contract and they're going to go over</p>

22 (Pages 82 to 85)

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<p style="text-align: right;">Page 86</p> <p>1 to the competitor's products, you can't convert a</p> <p>2 hospital very quickly, or if you have a large</p> <p>3 hospital chain. So we would definitely charge</p> <p>4 them list prices.</p> <p>5 Q. Are list prices as --</p> <p>6 A. Small hospitals that are, you know,</p> <p>7 fifty bed hospitals, small hospitals. It costs a</p> <p>8 lot of money to distribute to them and ship to</p> <p>9 them, and you don't have, it's really expensive</p> <p>10 for the freight. You have to bring all these</p> <p>11 products and different list numbers and freight</p> <p>12 things down.</p> <p>13 Q. Does the list price include cost of</p> <p>14 shipping and distribution?</p> <p>15 A. I'm not sure. I don't know for sure.</p> <p>16 We'd have to ask someone who's in our finance</p> <p>17 department.</p> <p>18 Q. The next term is "direct price." Is</p> <p>19 that a term that you're familiar with?</p> <p>20 A. I'm not a hundred percent, I'm not about</p> <p>21 like sixty percent sure. I have a guess, but I'm</p> <p>22 not sure.</p>	<p style="text-align: right;">Page 88</p> <p>1 always having quality problems and always having</p> <p>2 the FDA shut them down. So I think it was</p> <p>3 associated mostly with the products that that</p> <p>4 company, you know, that group of products.</p> <p>5 Q. "DOJ price"?</p> <p>6 MR. DALY: Object to the form.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Is that a term that you've heard?</p> <p>9 A. No.</p> <p>10 Q. "Ven-A-Care price," is that a term that</p> <p>11 you've heard?</p> <p>12 A. No, no.</p> <p>13 Q. "Resource list"?</p> <p>14 A. No.</p> <p>15 Q. "Spread"?</p> <p>16 A. It's not a terminology that I use. I've</p> <p>17 heard the terminology in the newspaper.</p> <p>18 Q. Okay.</p> <p>19 A. And the Pink Sheets.</p> <p>20 Q. Have you ever used it yourself?</p> <p>21 A. No.</p> <p>22 Q. Are you familiar with a 2002 DOJ Pricing</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. DALY: Objection, calls for</p> <p>2 speculation.</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. I don't want you to guess.</p> <p>5 A. Okay. No, I don't.</p> <p>6 Q. "Catalog price"?</p> <p>7 A. No.</p> <p>8 Q. No, you don't have an understanding as</p> <p>9 to that term?</p> <p>10 A. No. My thought would be catalog price</p> <p>11 and list price is just the same term.</p> <p>12 Q. Okay. "RxLink price"?</p> <p>13 A. RxLink, I know a little bit about it but</p> <p>14 not very much.</p> <p>15 RxLink was a price where</p> <p>16 wholesalers would keep extra inventory of our</p> <p>17 products. So if people went on back order, they</p> <p>18 could offer an intermediate price.</p> <p>19 And that was I think focused more</p> <p>20 on, there were several groups of products and</p> <p>21 several manufacturers, a company called Lyphomed,</p> <p>22 that was always going in and out of production and</p>	<p style="text-align: right;">Page 89</p> <p>1 Survey?</p> <p>2 A. I wouldn't know what a, no, I don't know</p> <p>3 what that is.</p> <p>4 Q. Are you aware or were you -- strike</p> <p>5 that.</p> <p>6 In 2002 were you ever involved with</p> <p>7 discussions concerning proposed pricing changes by</p> <p>8 the Department of Justice in 2000?</p> <p>9 MR. DALY: Object to the form.</p> <p>10 THE WITNESS: Not to my knowledge.</p> <p>11 You'd have to give me more information to know</p> <p>12 what you're talking about.</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Well, I just want to know just generally</p> <p>15 if you have an understanding.</p> <p>16 A. No.</p> <p>17 Q. In 2001 did Abbott make large scale</p> <p>18 price adjustments to its generic products?</p> <p>19 A. I don't know.</p> <p>20 Q. Are you familiar with any price</p> <p>21 adjustments that were made to generic products in</p> <p>22 or about the spring of 2001?</p>

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<p style="text-align: right;">Page 286</p> <p>1 MR. DALY: I'm going to object. This  2 question has been asked like ten times now, and  3 I'm going to instruct her not to answer. I think  4 you're being harassing at this point.  5 MR. RICKLIN: You're not going to answer  6 that question?  7 MR. DALY: She's already answered it ten  8 times.  9 MR. RICKLIN: No, never answered it, but  10 okay.  11 You're going to follow your  12 attorney's instruction?  13 THE WITNESS: I'm going to follow my  14 attorney's instruction.  15 BY MR. RICKLIN:  16 Q. Ms. Mershimer, are you aware that  17 third-party payors such as Medicaid determine  18 reimbursement from AWP?  19 MR. DALY: Object to the form.  20 BY MR. RICKLIN:  21 Q. Is that something that you're aware of?  22 A. No. I'm not aware of that detail on</p>	<p style="text-align: right;">Page 288</p> <p>1 increase my prices every two years, sometimes  2 every six months.  3 Q. Earlier you told us that for proprietary  4 products the list price was generally the price  5 charged to the customer; correct?  6 A. Correct.  7 Q. What about for generic products? Is the  8 list price for Abbott's generic products different  9 from the market price for those products?  10 MR. DALY: Object to the form. Go  11 ahead.  12 THE WITNESS: The list price would be  13 paid by hospitals that weren't under contract with  14 us. So those hospitals would pay the list price.  15 As well as any time there are back orders or  16 customers go out, people go out of business,  17 anybody would then pay that list price that wasn't  18 contracted with us.  19 BY MR. RICKLIN:  20 Q. For the hospitals that did have  21 contracts with Abbott, did they pay less than list  22 price for generic products?</p>
<p style="text-align: right;">Page 287</p> <p>1 Medicaid.  2 Q. You've never heard that?  3 A. I've never gotten involved in a lot of  4 issues with Medicaid, no.  5 Q. But my question is have you ever heard  6 that third-party payors such as Medicaid determine  7 reimbursement from AWP's?  8 MR. DALY: Object to the form.  9 THE WITNESS: No. I have not heard  10 that.  11 BY MR. RICKLIN:  12 Q. Never heard that?  13 A. No. I have not.  14 Q. Did Abbott increase its list prices  15 annually?  16 A. We would increase our list prices  17 routinely. It wouldn't always be on an annual  18 basis.  19 Q. But on a regular basis; correct?  20 A. Correct.  21 Q. And generally was that annually?  22 A. Sometimes it would be annually. I</p>	<p style="text-align: right;">Page 289</p> <p>1 A. They would pay, we would negotiate a  2 discount.  3 Q. They'd pay a contract price?  4 A. They'd pay a contract price.  5 Q. And would you agree that the contract  6 price was less than the list price for Abbott's  7 generic products?  8 A. Yes.  9 Q. And that was true for the hospital  10 customers; correct?  11 A. Yes.  12 Q. And that was true for the Alternate Site  13 customers; correct?  14 A. I didn't have Alternate Site products,  15 so I don't know the details there. But I know it  16 was true for the hospital products, I mean to the  17 hospitals.  18 Q. I understand that you weren't  19 responsible for the Alternate Site customers. But  20 is that your understanding, that the Alternate  21 Site customers that had contracts paid less than  22 list price for Abbott's generic products?</p>

73 (Pages 286 to 289)

Henderson Legal Services  
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Mershimer, P. Loreen

August 23, 2007

Chicago, IL

<p style="text-align: right;">Page 318</p> <p>1 we have to do to get her back. It's been a long 2 day. 3 MR. RICKLIN: I understand. 4 MR. DALY: We started at 9:00. 5 MR. RICKLIN: I mean it's your call and 6 the witness' call. 7 MR. DALY: Yeah, I don't think we could, 8 I mean I'd like to but I think it's just too much 9 to ask the witness to sit here for twelve hours of 10 deposition. It's just not going to happen. 11 So what I would suggest is that, if 12 you want to, just finish that document or just 13 finish and we'll call it a day. 14 MR. RICKLIN: Let me at least finish 15 the, we're not going to finish under those 16 constraints. 17 MR. DALY: Right. 18 MR. RICKLIN: But let me at least finish 19 the document. 20 MR. DALY: That's what I'm offering up. 21 MR. RICKLIN: That's great. 22</p>	<p style="text-align: right;">Page 320</p> <p>1 BY MR. RICKLIN: 2 Q. The next sentence in that paragraph 3 states "Increases that generally approximated the 4 change in Consumer Price Index change for the 5 urban market basket (CPI-U) exacerbating any 6 differential to real prices in the market." 7 Was that a true statement as of 8 January 2001 that the annual increases generally 9 approximated the change in Consumer Price Index 10 change for the urban market basket? 11 MR. DALY: Object to the form. Go 12 ahead. 13 THE WITNESS: I don't have enough 14 knowledge of the urban market basket. I thought 15 it would be a hospital basket. 16 BY MR. RICKLIN: 17 Q. But as far as approximating the change 18 in the Consumer Price Index, you did testify 19 earlier that that was a factor -- 20 A. Yes, I did. 21 MR. DALY: Let him finish. 22 BY MR. RICKLIN:</p>
<p style="text-align: right;">Page 319</p> <p>1 BY MR. RICKLIN: 2 Q. Ms. Mershimer, I believe you told us 3 earlier that the regular list price increases were 4 generally based at least in part upon the CPI, or 5 Consumer Price Index, at least in part; is that 6 right? 7 A. Correct. 8 Q. We're back on Exhibit Mershimer 052. The 9 next sentence, before the break I had asked you about 10 the sentence in the second paragraph beginning 11 "Due to other considerations." Do you recall 12 that? 13 A. No, I don't. Which paragraph are you 14 on? 15 Q. Under Background. 16 A. "Due to," is that the word it starts off 17 with? 18 Q. Right. 19 MR. DALY: Kind of in the middle of that 20 paragraph right there. 21 MR. RICKLIN: Yeah, right in the middle. 22 THE WITNESS: Oh, yeah, I've got it.</p>	<p style="text-align: right;">Page 321</p> <p>1 Q. -- in the regular list price increases; 2 correct? 3 A. Yes. 4 Q. Okay. The next sentence states "Though 5 the majority of eventual sales dollars are 6 processed at steep discounts to the catalog 7 pricing under contractual commitments, there 8 continues to be a small portion of sales (less 9 than one percent) which are processed at these 10 elevated levels." 11 Earlier I believe you told us that 12 you did not know the percentage of prices in which 13 the sales -- excuse me. Earlier I believe you 14 told us you didn't know the exact percentage of 15 sales of HPD products that were sold at list 16 price; correct? 17 MR. DALY: Object to the form, 18 mischaracterizes. Go ahead. 19 THE WITNESS: I do not know the 20 percentage in aggregate. 21 BY MR. RICKLIN: 22 Q. So do you have any reason or any</p>

81 (Pages 318 to 321)

Mershimer, P. Loreen

August 23, 2007

Chicago, IL

<p style="text-align: right;">Page 326</p> <p>1 the reduction in the list prices?</p> <p>2 A. No. I'm not aware.</p> <p>3 Q. You had never heard anything about that?</p> <p>4 A. No, I didn't.</p> <p>5 MR. RICKLIN: I'm through with this</p> <p>6 document, but I am not through with the</p> <p>7 deposition, obviously. And obviously we're going</p> <p>8 to keep it open and reserve the right to ask</p> <p>9 additional questions. But I understand it's been</p> <p>10 a long day.</p> <p>11 MR. DALY: And there's several hours</p> <p>12 more based on what you told me and Mr. Sisneros.</p> <p>13 MR. RICKLIN: Well, that's right. It's</p> <p>14 reasonable to break now.</p> <p>15 Thank you for your time,</p> <p>16 Ms. Mershimer.</p> <p>17 THE VIDEOGRAPHER: We are off the record</p> <p>18 at 5:25 p.m. with the conclusion of Day 1 in the</p> <p>19 deposition of P. Loreen Mershimer.</p> <p>20 (WHEREUPON said deposition was so</p> <p>21 concluded.)</p> <p>22</p> <p style="text-align: right;">Page 327</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 _____</p> <p>7 SIGNATURE OF THE WITNESS</p> <p>8 Subscribed and sworn to and before me</p> <p>9 this _____ day of _____, 20____.</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13 Notary Public</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 328</p> <p>1 STATE OF ILLINOIS )</p> <p>2 COUNTY OF C O O K )</p> <p>3</p> <p>4 I, Donna M. Kazaitis, RPR, CSR No.</p> <p>5 084-003145, do hereby certify:</p> <p>6 That the foregoing deposition of P. LOREEN</p> <p>7 MERSHIMER was taken before me at the time and</p> <p>8 place therein set forth, at which time the witness</p> <p>9 was put under oath by me;</p> <p>10 That the testimony of the witness and all</p> <p>11 objections made at the time of the examination</p> <p>12 were recorded stenographically by me, were</p> <p>13 thereafter transcribed under my direction and</p> <p>14 supervision and that the foregoing is a true</p> <p>15 record of same.</p> <p>16 I further certify that I am neither counsel</p> <p>17 for nor related to any party to said action, nor</p> <p>18 in any way interested in the outcome thereof.</p> <p>19 IN WITNESS WHEREOF, I have subscribed my name</p> <p>20 this 4th day of September, 2007.</p> <p>21 _____</p> <p>22 Donna M. Kazaitis, RPR, CSR 084-003145</p>
--	---

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# EXHIBIT 52

Miller, James E.

July 30, 2007

Chicago, IL

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X  
IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE )  
PRICE LITIGATION ) MDL No. 1456  
-----) Civil Action  
This document relates to: ) No. 01-12257-PBS  
United States of America, )  
ex. rel. Ven-a-Care of the )  
Florida Keys, Inc., ) Hon. Patti Saris  
vs. )  
Abbott Laboratories, Inc., ) Magistrate Judge  
CIVIL ACTION NO. 06-11337-PBS ) Marianne Bowler  
-----X

VIDEOTAPED DEPOSITION OF

JAMES E. MILLER

CHICAGO, IL

JULY 30, 2007

Henderson Legal Services  
202-220-4158

Miller, James E.

July 30, 2007

Chicago, IL

<p style="text-align: right;">Page 54</p> <p>1 way. Who picked the members of the Medicare 2 Working Group? 3 A. The initial participants were suggested 4 by Mr. Moorehead. 5 Q. And the individuals that are listed in 6 Exhibit Miller 1162, are those the individuals 7 that were suggested by Mr. Moorehead? 8 A. I do not remember. 9 Q. Are some of the individuals that are to 10 be found on the list of Exhibit Miller 1162 some 11 of the individuals that Mr. Moorehead suggested? 12 A. Yes. 13 Q. What individuals are those? 14 A. I cannot answer with total accuracy. 15 Q. To the best of your recollection. 16 A. I mean there are people -- I don't 17 know. I mean ADD, Paul Landauer had -- well, I'm 18 not -- I'm not sure who was on the original list. 19 I mean that's ten years ago, guys. 20 Q. From the best of your recollection, 21 were most of the individuals that Moorehead 22 suggested to you in fact the members of the</p>	<p style="text-align: right;">Page 56</p> <p>1 MS. TABACCHI: Object to the form. 2 THE WITNESS: Knowledgeable. 3 BY MR. SISNEROS: 4 Q. Knowledgeable on reimbursement issues 5 in their division? 6 A. Yes. 7 Q. Since your name is on this list, then 8 you are an individual that is knowledgeable on 9 reimbursement issues? 10 A. No, sir. 11 Q. Why are you here? 12 A. I was assigned a coordination role. 13 Q. And what -- in coordination role, what 14 were your responsibilities? 15 A. To get the individuals together for a 16 one-hour meeting once a month. 17 Q. To discuss reimbursement? 18 A. To discuss -- 19 MS. TABACCHI: Object to the form. 20 THE WITNESS: To discuss coverage 21 issues for their products. I'm going to 22 interchange "reimbursement" and "coverage" as the</p>
<p style="text-align: right;">Page 55</p> <p>1 Medicare Working Group? 2 A. I remember there were people that 3 showed up for the initial meetings that said, 4 "Why am I here?" 5 Q. When was that initial meeting? 6 A. It would have to be in the fall of '96. 7 Q. August, September, October, November of 8 '96? 9 A. Somewhere after I was there. 10 MS. TABACCHI: Object to form. 11 BY MR. SISNEROS: 12 Q. And when these individuals asked, "Why 13 am I here," what did you tell them? 14 A. "It's a working group to share 15 information on the reimbursement products. If 16 you're responsible for that, you belong here. If 17 you're not responsible for that, give me a name." 18 Q. So at least in the -- in identifying 19 the members that were to be on the Medicare 20 Working Group, they were to be individuals that 21 were responsible for reimbursement issues in 22 their division?</p>	<p style="text-align: right;">Page 57</p> <p>1 same word. 2 BY MR. SISNEROS: 3 Q. Okay. And "coverage," you mean 4 coverage by third-party payers? 5 A. Any third-party payer. 6 Q. Private health insurance? 7 A. Hospitals, yeah, right. 8 Q. Medicare/Medicaid? 9 A. Any third-party payer. 10 Q. Including Medicare and Medicaid? 11 A. Yes, sir. 12 Q. All right. Was Rich Rieger someone who 13 was knowledgeable in reimbursement? 14 MS. TABACCHI: Object to the form. 15 THE WITNESS: I do not believe so. 16 BY MR. SISNEROS: 17 Q. How about Cathy Babington? 18 A. I do not believe so. 19 Q. Hank Doyle? 20 A. I do not believe so. 21 Q. Don Buell? 22 MS. TABACCHI: Object to the form.</p>

15 (Pages 54 to 57)

Miller, James E.

July 30, 2007

Chicago, IL

<p style="text-align: right;">Page 342</p> <p>1 MS. THOMAS: This seems very 2 anticlimactic, but we are finished. I have no 3 further questions unless anyone else does. 4 MR. STUART: No. 5 MR. SISNEROS: No. 6 MS. TABACCHI: I will ask the court 7 reporter to mark the transcript under the 8 protective order, please. Thank you. 9 THE VIDEOGRAPHER: We are off the 10 record at 5:27 p.m. with the conclusion of the 11 deposition of James Miller. 12 (WHEREUPON, FURTHER DEPONENT 13 SAYETH NOT) 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 344</p> <p>1 STATE OF ILLINOIS )  ) ss: 2 COUNTY OF COOK )  I, Deborah Habian, a Certified Shorthand 3 Reporter within and for the State of Illinois, do  hereby certify: 4 That previous to the commencement of the  examination of the witness, the witness was duly sworn 5 to testify the whole truth concerning the matters  herein; 6 That the foregoing deposition was reported  stenographically by me, was thereafter reduced to 7 printed transcript by me, and constitutes a true  record of the testimony given and the proceedings had; 8 That the said deposition was taken before  me at the time and place specified; 9 That the reading and signing by the 10 witness of the deposition transcript was agreed upon 11 as stated herein; 12 That I am not a relative or employee of 13 attorney or counsel, nor a relative or employee of 14 such attorney or counsel for any of the parties 15 hereto, nor interested directly or indirectly in 16 the outcome of this action. 17 IN WITNESS WHEREOF, I do hereunto set my 18 hand this ____ day of _____, 2007. 19 20 DEBORAH HABIAN, CSR, RMR, CRR, CBC 21 Notary Public 22 CSR No. 084-022432</p>
<p style="text-align: right;">Page 343</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF MASSACHUSETTS  3 IN RE: PHARMACEUTICAL ) 4 INDUSTRY AVERAGE WHOLESALE ) 5 PRICE LITIGATION ) MDL No. 1456  -----) Civil Action 6 This document relates to: ) No. 01-12257-PBS 7 United States of America, ) 8 ex. rel. Ven-a-Care of the ) 9 Florida Keys, Inc., ) Hon. Patti Saris  vs. ) 10 Abbott Laboratories, Inc., ) Magistrate Judge 11 CIVIL ACTION NO. 06-11337-PBS ) Marianne Bowler  12 I hereby certify that I have read the 13 foregoing transcript of my deposition given at the 14 time and place aforesaid, consisting of pages 1 to 15 283, inclusive, and I do again subscribe and make oath 16 that the same is a true, correct, and complete 17 transcript of my deposition so given as aforesaid and 18 includes changes, if any, so made by me.  19 20 21 22</p> <p>_____ JAMES E. MILLER SUBSCRIBED AND SWORN TO before me this ____ day of _____, A.D. _____.</p> <p>_____ Notary Public</p>	

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Henderson Legal Services  
202-220-4158

# EXHIBIT 53

New York, NY

Page 358

C O N F I D E N T I A L

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

- - - - -x

In re: PHARMACEUTICAL INDUSTRY AVERAGE

WHOLESALE PRICE LITIGATION

- - - - -x

THIS DOCUMENT RELATES TO: MDL No. 1456

UNITED STATES OF AMERICA ex rel. Civil Action

VEN-A-CARE OF THE FLORIDA KEYS, No.01-12257-

INC., v. DEY, INC., et al., Civil PBS

Action No. 05-11084-PBS; and UNITED

STATES OF AMERICA ex rel. VEN-A-CARE

OF THE FLORIDA KEYS, INC., v.

BOEHRINGER INGELHEIM CORP., et al.,

Civil Action No. 07-10248-PBS

- - - - -x

(Cross-noticed captions on following pages.)

November 19, 2008

9:10 a.m.

Continued videotaped deposition of

Thomson PDR Inc., by KRISTEN MINNE

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

125a39a5-4062-4ab8-9223-4743282bdae

New York, NY

Page 483

1 A. I had not seen these documents prior  
2 to yesterday.  
3 Q. And then my second question is,  
4 therefore, is it correct that you do not have any  
5 personal knowledge of those -- of the contents of  
6 those documents?  
7 A. That is correct.  
8 Q. Okay.  
9 You could put those aside except for  
10 the last one, Exhibit 24.  
11 Now, you testified earlier today that  
12 you have never spoken to any manufacturers  
13 regarding their pricing; is that correct?  
14 A. That is correct.  
15 Q. And is the same true for my client,  
16 Abbott laboratories?  
17 A. Yes, it is.  
18 Q. Is the same also true for my other  
19 client, TAP Pharmaceuticals?  
20 A. Yes, it is.  
21 Q. If you could look at the second page  
22 of Exhibit 24. And I believe yesterday Mr.

Page 484

1 Anderson directed you to some notes dated May  
2 16th, '02 on page 2.  
3 Do you see those?  
4 A. Yes, I see those.  
5 Q. Okay.  
6 And I'm referring specifically to the  
7 -- well, let me ask you this.  
8 With respect to the first note, 5/16/02  
9 by Flanagan, does that mean that person is the  
10 person taking -- F. Flanagan or Flanagan, I'm not  
11 sure which -- is that the person who recorded the  
12 note?  
13 A. Yes, that's the person who recorded  
14 that.  
15 Q. And you have no personal knowledge  
16 that Abbott directed any markup of its products  
17 in order to calculate the AWP, do you?  
18 A. I have no personal knowledge of that.  
19 Q. And you never had a conversation with  
20 Abbott in which they directed you to calculate a  
21 certain markup in order to calculate AWP?  
22 A. I have never had a conversation like

Page 485

1 that with Abbott.  
2 Q. And the second note, dated 5/16/02 by  
3 Lane -- do you see that one?  
4 A. Yes, I do.  
5 Q. Similarly, you have no personal  
6 knowledge as to whether or not Abbott indicated  
7 that -- or anyone at Abbott indicated that Red  
8 Book was to continue using an 18.75 percent  
9 markup?  
10 A. I do not have personal knowledge of  
11 that.  
12 Q. And, indeed, you don't know who Jerrie  
13 is, do you?  
14 A. I do not.  
15 Q. And you had no conversation with  
16 anyone at Abbott in which they indicated that Red  
17 Book should continue to use an 18.75 percent  
18 markup; is that correct?  
19 A. That is correct.  
20 Q. Okay. Now, looking at the first page,  
21 can you look at the note dated 4/16/2003.  
22 Do you see that?

Page 486

1 A. I see it.  
2 Q. And can you read that note aloud?  
3 A. "4/9/2003 rec" -- received --  
4 "confirmation of fax sent to Abbott. April  
5 Gerzel at RB would add 20 percent to WAC to  
6 obtain AWP on all Abbott pharmaceutical products.  
7 KV."  
8 Q. What is your understanding of that  
9 note?  
10 A. My understanding of that note is that  
11 the Red Book person, KV, sent an AWP policy to  
12 Abbott, letting them know what we would be doing  
13 to calculate AWP, and in return we received  
14 confirmation of the fax that we had sent to  
15 Abbott.  
16 Q. So your understanding is that the  
17 confirmation is just that the fax went through?  
18 A. Correct, we keep all confirmation of  
19 fax transmittals.  
20 Q. And just so you understand, it's not  
21 confirmation by Abbott of the policy that Red  
22 Book sent to them?

33 (Pages 483 to 486)

Henderson Legal Services, Inc.

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COMPANY NAME

Abbott Pharmaceuticals

DATE

04/13/2004

# AWP POLICY CORRESPONDENCE

Ready to  
file

EXHIBIT

Minne 104  
11.19 HLL

viewitem [https://www.lextranet.com/lcs/search/prodDocs/viewItem.lcs?docID=10189951eDocID=0tableID=1464]

Ready to  
file

COMPANY NAME

Abbott Pharmaceuticals

DATE

07/13/2004

# AWP POLICY CORRESPONDENCE

THOMSON MICROMEDEX  
RED BOOK® Database Administration  
6200 South Syracuse Way, Suite 300  
Greenwood Village, CO 80111-4740  
(303) 486-6796  
(800) 724-9937 Toll Free  
(303) 486-9297 Fax  
[www.mdx.Red Book data@thomson.com](http://www.mdx.RedBook.data@thomson.com)

07/13/2004

April Gerzel  
Pricing Supervisor, Chargebacks/Membership Maintenance  
Abbott Pharmaceuticals

This letter is in regards to our email conversations concerning AWP for (Abbott Pharmaceuticals)'s products, on (07/13/2004/6:26 A.M.). In the absence of a manufacturer provided AWP or a manufacturer calculated markup to establish an AWP, we will be implementing a 20 % markup above (WAC) to calculate AWP. We will not report a third party's determination of AWP for your products. As discussed in our conversation, this markup will apply to (all (Abbott Pharmaceuticals)'s products.). This is in accordance with our company policy for calculation of AWP.

Sincerely,



Traci Kellam  
Red Book Industry Liaison

**THOMSON  
MICROMEDEX**

**RED BOOK® Database Administration**  
6200 S. Syracuse Way, Suite 300  
Greenwood Village, CO 80111-4740  
Tel (303) 486-6796 (800) 724-9937 Fax (303) 486-9297  
www.mdx.Red\_Book\_Data@thomson.com

**THOMSON**  
  
**MICROMEDEX**

## Fax Cover Sheet

---

**From** Traci Kellam

---

**Date** 07/13/2004

---

**Subject** Red Book AWP

---

---

**To** April Gerzel/Abbott Pharma.

---

**Fax** 847-937-1862

---

**Tel** 847-937-6009

---

**Pages** 2 including cover sheet

---

Hi April,

Please see attached fax for Abbott Pharmaceuticals. Attached is the new Red Book AWP policy for the New Year. Please do not hesitate to contact me with any questions at, 800-724-9937 or direct # 303-486-6585.

Thanks, Traci

http://www.lextranet.com/ics/search/prodDocs.viewitem.ics?docID=10189951eDocID=0tableID=1464]

## TRANSACTION REPORT

JUL-13-2004 TUE 10:17 AM

FOR:

SEND (M)

DATE	START	RECEIVER	PAGES	TIME	NOTE	M#
JUL-13	10:16 AM	918479371862	2	36"	OK	80

Page 1 of 2

**Kellam, Traci**

---

**From:** Kellam, Traci  
**Sent:** Tuesday, July 13, 2004 9:39 AM  
**To:** 'april.gerzel@abbott.com'  
**Subject:** RE: Red Book AWP

Hi April,

Due to your confirmation below that there has been no changes to the established AWP policy, I have just faxed you at, 847-937-1862, the new AWP policy for the New Year. Please do not hesitate to contact me with any questions.

Traci

-----Original Message-----

**From:** april.gerzel@abbott.com [mailto:april.gerzel@abbott.com]  
**Sent:** Tuesday, July 13, 2004 6:26 AM  
**To:** Kellam, Traci  
**Cc:** Joe.Fiske@abbott.com  
**Subject:** Re: Red Book AWP

Traci,

I believe it is important for me to clarify what occurred in April 2003. As you may be aware, in April 2003, Ms. Voeck wrote, "In the absence of a manufacturer provided AWP or a manufacturer calculated markup to establish an AWP, we will be implementing a 20 % markup above WAC to calculate AWP." Later in that same letter, Ms. Voeck wrote, "This is in accordance with our company policy for calculation of AWP." Of course, Abbott does not control how Red Book conducts its business, nor does Abbott provide AWP or a calculated markup to establish an AWP. Consequently, Abbott concluded that there was no need to respond to Ms. Voeck's April 2003 letter. Abbott trusts that Red Book will continue to conduct its own business as it sees fit and that it will get independent legal advice when Red Book deems it appropriate. Thank you for your attention to this matter.

Sincerely,  
April Gerzel  
Pricing Supervisor, Chargebacks/Membership Maintenance  
PPD Pricing  
(847) 937-6009  
fax (847) 937-1862  
April.Gerzel@abbott.com

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Thank you.

7/13/2004

Red Book MFR 0277035  
Confidential



urlItem [http://www.lextranet.com/lcs/search/progDocs/viewItem.lcs?docID=10189951aDocID=0tableID=1464]

Page 2 of 2

"Kellam, Traci" <Traci.Kellam@thomson.com>

To: "april.gerzel@abbott.com" <april.gerzel@abbott.com>

CC:

Subject: Red Book AWP

07/08/2004 02:50 PM

Hi April,

We here at the Red Book had established an AWP policy with you on 04/16/2003. Since this has been over a year we need to verify that the AWP policy that we had established of AWP = WAC + 20%-per Red Book AWP policy, due to Abbott Pharmaceuticals no longer supplying an AWP is still in effect. Would you please verify this or make any changes at this time, I need to do some price updates on your Depakene and Tarka products.

Thanks, Traci

Traci Kellam  
Red Book Administration  
Thomson MICROMEDEX  
303-486-6585  
303-486-9297 (fax)  
[traci.kellam@thomson.com](mailto:traci.kellam@thomson.com)  
[mdx.Red\\_Book\\_Data@thomson.com](mailto:mdx.Red_Book_Data@thomson.com)

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7/13/2004

Red Book MFR 0277036  
Confidential



## ABBOTT PHARMACEUTICAL Company Pricing/Markup History 1/1/1995 - 7/13/2004

Company	Add Date	User	Note Type	Note Detail
ABBOTT PHARMACEUTICAL	7/13/2004	tkellam	MKP	Confirmed through email with April Gerzel that there are no changes to the established AWP policy. For the New Year, continue using, AWP = WAC + 20%- per RB company policy. Email confirmation is filed with Log # 9696
	4/16/2003	kvoeck	MKP	4/9/2003 Rec confirmation of fax sent to Abbott: April Gerzel that RB would add 20% to WAC to obtain AWP, on all Abbott Pharmaceutical Products.kv
	3/5/2003	llovato	MKP	effective 3/3/03 price list from abbot did a 25% markup from previous notes Cartrol,Cecon,Cefol, Colchicine,dayalets,dical-d,enduronyl,fero-folic,fero-grad,hytrin,iberet,k-tabs,mavik,meridia,optilets,pce,pediafor ,rythmol,surbex,viday,vi-daylin,
	10/3/2002	llovato	MKP	effective 10/3/02 blaxin, cartrol ft, cecon, cefol, colchicine, cylet, dayalets, dical-d, enduron, endoronyl, enduronyl
	8/20/2002	lane	MKP	AWP = WAC + 25% (previously provided) LIST/TRADE PRICE = DIRECT PRICE WAC =CASE/ WHOLESALE PRICE per Tina use date of e:mail for effective date of deacts

---

**From:** Cicerale, Jerrie AP  
**Sent:** Tuesday, November 24, 1998 7:36 AM  
**To:** 'REDBOOK(E-MAIL)'  
**Cc:** Adams, Harry APX  
**Subject:** REDBOOK VERIFICATION KIT  
  
**Attachments:** NEW.TXT; DELETES.TXT

Roni -- I will not be returning your verification package because I send you adds and deletes through the entire year. I also send you our new catalog every year for your reference. This letter should serve as your signoff for your next printing. Below are some adds and deletes for your next update.



NEW.TXT (11 KB) DELETES.TXT (9 KB)

Thanks, Jerrie Cicerale  
HPD Contract Marketing  
Abbott Laboratories, Inc.



# EXHIBIT 54

Miser, Daryl

HIGHLY CONFIDENTIAL February 28, 2008  
Kansas City, MO

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X

IN RE: PHARMACEUTICAL INDUSTRY ) MDL No. 1456

AVERAGE WHOLESALE PRICE LITIGATION ) Case No.

-----X 01-12257-PBS

THIS DOCUMENT RELATES TO: )

UNITED STATES OF AMERICA, ex rel. )

VEN-A-CARE OF THE FLORIDA KEYS, ) PORTIONS OF

INC., v. ABBOTT LABORATORIES, INC., ) THIS DOCUMENT

CIVIL ACTION NO. 06-11337-PBS; ) MARKED

-and- ) HIGHLY

STATE OF CALIFORNIA, ex rel. ) CONFIDENTIAL

VEN-A-CARE v. ABBOTT LABORATORIES, )

INC., et al., )

CASE NO. 1:03-CV-11226-PBS )

-----X

VIDEOTAPED DEPOSITION OF DARYL MISER, a  
Witness, taken on behalf of the Plaintiffs before  
Robin Prouty, CCR No. 868, pursuant to Notice,  
February 28th, 2008, at the offices of Shook, Hardy  
& Bacon, 2555 Grand Boulevard, Kansas City, Missouri.

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Miser, Daryl

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1 field would provide to corporate office.  
 2 Q. (By Ms. Ford) Okay. If you look at  
 3 the Mole winner for the week, and it's actually -  
 4 - it says name, Michelle Thrawl, and territory,  
 5 and production was solutions, and it says Mole  
 6 tip?

7 A. Yes.

8 Q. Does this appear to be a tip to Abbott  
 9 sales reps about dealing with this particular  
 10 solution bag?

11 MR. SCANNAPIECO: Objection, form.

12 A. It appears to be a tip to help increase  
 13 Safe Flow sales, yes.

14 Q. (By Ms. Ford) Okay. Then if you go to  
 15 the next page, you see the top, it says Other  
 16 Outstanding Entries?

17 A. Yes.

18 Q. The name of Dennis Kelly and the  
 19 product is Vancomycin?

20 A. Yes.

21 Q. Turn to the last page of the document  
 22 where it's still discussing the Vancomycin

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1 product. The very last paragraph, it says,  
 2 Vancomycin is an extremely important product for  
 3 us and represents significant sales dollars. Do  
 4 you see that?

5 A. Yes, I do.

6 Q. Would you agree that Vancomycin was an  
 7 important product for Alternate Site?

8 MR. SCANNAPIECO: Objection, form.

9 A. It was an important product for me, and  
 10 it was -- it's a big injectable, yes.

11 Q. (By Ms. Ford) And the last sentence  
 12 says, In the meantime, watch out for Baxter out  
 13 there and don't let them steal your Vancomycin  
 14 business. Do you see that?

15 A. Yes

16 Q. Do you recall Baxter being one of  
 17 Abbott's competitors for the product Vancomycin?

18 A. Yes.

19 Q. Aside from the monthly Significant  
 20 Event Report that we looked at a few minutes ago,  
 21 do you recall reporting to your district manager  
 22 in writing on a regular basis, for example,

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1 through a weekly report?

2 MR. SCANNAPIECO: Objection, form.

3 A. It's been a long, long time, literally  
 4 back to the early 90's. But we did at one point  
 5 for a short period of time report weekly in  
 6 written form.

7 Q. (By Ms. Ford) And what kind of  
 8 information would you include in your weekly  
 9 report?

10 A. It would be identical information to  
 11 the monthly report, just obviously more frequent.

12 Q. Okay. At the time that you were  
 13 preparing a weekly report, did you also prepare a  
 14 monthly report?

15 MR. SCANNAPIECO: Objection, form.

16 A. I -- I can't answer. I don't recall.  
 17 It's been so long since I did weeklies. I'm  
 18 guessing yes would be the answer to that. That's  
 19 speculation. But I think I've always turned in  
 20 monthly reports and only briefly turned in weekly  
 21 reports.

22 Q. (By Ms. Ford) Okay. Earlier, we -- we

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1 discussed the term AWP. Do you recall that?

2 MR. SCANNAPIECO: Objection, form.

3 A. Yes, I remember that. Yes.

4 Q. (By Ms. Ford) And what do you  
 5 understand AWP to be?

6 A. Just the initials of AWP, what it --  
 7 the acronym --

8 Q. What does AWP stand for?

9 A. Average wholesale cost. Average  
 10 wholesale price.

11 Q. Okay. And what do you understand  
 12 average wholesale price to be?

13 MR. SCANNAPIECO: Objection, form.

14 A. I don't -- I don't know specifically  
 15 what average wholesale price is as far as it  
 16 pertains to anything other than there's -- it's a  
 17 number.

18 Q. (By Ms. Ford) Okay. Did you  
 19 understand -- let me ask you differently. Did  
 20 any of the accounts that you called on -- were  
 21 any of the accounts that you called on interested  
 22 in AWP for Abbott's products?

51 (Pages 198 to 201)

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<p style="text-align: right;">Page 214</p> <p>1 has ever told me they've ever discussed AWP with 2 an account. 3 Q. Do you know who sets AWP? 4 A. I still don't have any clue how AWP is 5 achieved. I don't know. 6 Q. Okay. So as you sit here today, you 7 don't know whether or not Abbott has any control 8 over the AWP on its products; is that correct? 9 MR. SCANNAPIECO: Objection, form. 10 A. I understand Abbott has no control over 11 AWP at all. 12 Q. (By Ms. Ford) That's your 13 understanding. 14 A. That's my understanding, yes. 15 (Whereupon, Deposition Exhibit 16 Miser 011 was marked for identification.) 17 Q. (By Ms. Ford) I'm going to hand you a 18 document which I've marked as Exhibit 11. And 19 for the record, this is -- the first two pages of 20 it, an exhibit that has previously been marked in 21 other depositions. 22 A. Okay.</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. Therefore, Mike Heggie was able to get 2 Red Book to send a listing of the new AWP's for 3 all of our products which will be effective 4 through next April. I hope this information is 5 helpful. And if you have any questions, please 6 feel free to contact me. Best regards, Steve 7 Kipperman. Did I read that accurately? 8 A. Yes. 9 Q. Do you understand Red Book to quote 10 AWP's for reimbursement purposes? 11 MR. SCANNAPIECO: Objection, form. 12 A. I understand Red Book to quote AWP. 13 I'm not -- I'm not versed on how things are done 14 reimbursement-wise. 15 Q. (By Ms. Ford) Okay. I believe you 16 testified earlier, though, that you knew that 17 your customers were interested in AWP because of 18 getting paid; is that -- 19 A. Yes. 20 Q. -- correct? 21 A. Yes. I don't know how AWP plays to 22 that. I know it's there. I don't know how it's</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. And do you see the date on here of May 2 26, 1994? 3 A. Yes. 4 Q. And this is a memo from Alternate Site 5 Contract Marketing; is that correct? 6 A. Yes. 7 Q. And it's directed to field sales force 8 and district managers; is that correct? 9 A. Yes, it is. 10 Q. And you were a member of the Alternate 11 site field sales force in May of 1994; is that 12 correct? 13 A. Yes. 14 Q. The subject says Current Red Book AWP's? 15 A. Yes. 16 Q. And then it says, As you are aware, on 17 at the beginning of April, Abbott took a list 18 price increase. This also has an effect on our 19 AWP -- and then in parentheses, average wholesale 20 price -- which Red Book quotes for reimbursement 21 purposes. Did I read that accurately? 22 A. I believe so.</p>	<p style="text-align: right;">Page 217</p> <p>1 derived, but I know -- I know that companies use 2 that for their billing purposes -- or paying 3 purposes. 4 Q. Okay. 5 A. To get paid. 6 Q. To get paid. Okay. 7 A. Yes, ma'am. 8 Q. And I believe you also testified that 9 they would get paid -- you knew them to get paid, 10 for example, by Medicare; is that correct? 11 A. I understand them -- that they -- yes, 12 that they have some Medicare -- they'll have 13 Medicare patients on occasion in their patient 14 mix, yes. 15 Q. And they want to know the AWP 16 information with respect to Medicare; is that 17 correct? 18 MR. SCANNAPIECO: Objection, form. 19 A. I can just speculate that's what they 20 want to know AWP for is for billing particular 21 patients, yes. 22 Q. (By Ms. Ford) Okay. Are you familiar</p>

55 (Pages 214 to 217)

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Miser, Daryl

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1 better price if I worked with them.  
 2 Q. Okay. And going back to Exhibit 11, it  
 3 says Abbott took a list price increase. And the  
 4 next sentence says, This also has an effect on  
 5 our AWP. Did you understand there to be a  
 6 connection or a correlation between list price  
 7 and AWP on Abbott's products?  
 8 MR. SCANNAPIECO: Objection, form.  
 9 A. I did not -- other than recent  
 10 discussions, I didn't know that it had any  
 11 effect. I don't remember this document at all,  
 12 and I still didn't know the list price had any  
 13 effect on AWP. And I look back and I go, gosh, I  
 14 should know something like this, I've been around  
 15 a long time. But I did not know that list price  
 16 had an effect on AWP.  
 17 Q. (By Ms. Ford) Do you know how  
 18 receiving a copy of the Red Book product price  
 19 list for Abbott's products would be helpful to  
 20 you as a sales rep?  
 21 MR. SCANNAPIECO: Objection, form.  
 22 A. No, I wouldn't.

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1 Q. (By Ms. Ford) Have you ever seen a Red  
 2 Book before?  
 3 A. I have seen a Red Book, yes.  
 4 Q. And where have you seen Red Books?  
 5 A. The only time I've seen Red Books, I've  
 6 seen them on shelves at Methodist, and I know  
 7 I've seen them at Pharmicare. And I don't pay  
 8 any attention. They're probably on the shelves  
 9 of a lot of the pharmacies that I call on. I  
 10 don't pay attention. But I know I've seen it on  
 11 those two shelves.  
 12 Q. And did you understand that pharmacists  
 13 and pharmacies would look to Red Book for AWP  
 14 information?  
 15 MR. SCANNAPIECO: Objection, form.  
 16 A. Only -- that's what they would tell me  
 17 they used that book for.  
 18 Q. (By Ms. Ford) Other than the situation  
 19 that you just described with Mr. Glover, do you  
 20 recall other situations with your former Abbott  
 21 coworkers where AWP was discussed?  
 22 A. I don't think so. Other than in

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1 training, our office of ethics and compliance  
 2 training, in discussion or in tests that we've  
 3 taken. Other than that, I don't recall any  
 4 discussion on it.  
 5 Q. Do you recall a specific ethics and  
 6 compliance training while you were at Abbott that  
 7 instructed you not to discuss AWP?  
 8 A. I don't recall any specific one. I  
 9 know I -- I know we've -- we've had meetings. I  
 10 couldn't tell you the years. Meetings regarding  
 11 ethics and compliance where those type of issues  
 12 were covered. It wasn't an only AWP type of  
 13 discussion. And then I'm pretty certain we've  
 14 had at least one on-line test that -- maybe more  
 15 -- regarding conversations we can and cannot have  
 16 with accounts, and AWP would fall into that  
 17 category.  
 18 Q. And the on-line training that you're  
 19 referencing, would that -- was that training that  
 20 you took while you were an Abbott employee?  
 21 A. I believe we had -- we had gotten to  
 22 the point before we spun off where we were doing

Page 233

1 on-line training on certain things, you know, in-  
 2 between national meetings and such where not  
 3 everyone was getting together. We had a certain  
 4 time frame to go out on-line and review the  
 5 information and take a test.  
 6 Q. And do you currently take on-line  
 7 training in Hospira?  
 8 A. Yes.  
 9 Q. And do you know whether the on-line  
 10 training that you're recalling relating to AWP  
 11 was when you were an Abbott employee or a Hospira  
 12 employee?  
 13 MR. SCANNAPIECO: Objection, form.  
 14 A. I believe -- most certainly there was  
 15 Abbott. We started with Abbott, and it's  
 16 happened since. You know, the discussion has  
 17 gone on through Hospira as well.  
 18 Q. (By Ms. Ford) Okay. And now I'm  
 19 specifically talking about the on-line training  
 20 related to AWP. Do you know for sure that you  
 21 received that when you were an Abbott employee?  
 22 MR. SCANNAPIECO: Objection, form.

59 (Pages 230 to 233)

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1 MR. SCANNAPIECO: Objection, form.  
 2 A. I would say it's handled out of  
 3 corporate office at some level.  
 4 Q. (By Ms. Ford) Okay. And when it says  
 5 Abbott key executives, do you understand that to  
 6 be someone at Abbott corporate?  
 7 MR. SCANNAPIECO: Objection, form.  
 8 A. I wouldn't know. I assume key  
 9 executive means someone certainly above me.  
 10 Q. (By Ms. Ford) Okay. This paragraphs  
 11 goes on to say, In a subsequent business review  
 12 meeting, OptionCare purchasing stated that they  
 13 will be sending out a letter to their branches to  
 14 switch Abbott from -- excuse me -- to switch from  
 15 Abbott Vancomycin and Clafaron to APP because  
 16 Abbott's differential between cost and AWP is  
 17 significantly lower, and thus, they will make  
 18 more money with APP?  
 19 A. Yes, I see that.  
 20 Q. Okay. Do you recall your -- the  
 21 OptionCare branches in your territory switching  
 22 their purchases of Abbott Vancomycin to APP

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1 around this time?  
 2 A. In 2002, the OptionCares I had were  
 3 doing a reasonably small amount of business with  
 4 me, so their Vancomycin sales, even if they would  
 5 half them would not affect my sales too much  
 6 because they were buying so little from me to  
 7 begin with. So I understand that that's a  
 8 problem with most accounts was switching away  
 9 from Abbott Vanco, but specifically OptionCare, I  
 10 didn't have enough business with OptionCare to  
 11 really feel much impact.  
 12 Q. And whether or not it was significant  
 13 business for you, do you recall that being the  
 14 case, that they were switching their Vancomycin  
 15 purchases to APP?  
 16 MR. SCANNAPIECO: Objection, form.  
 17 A. I do not recall knowing that, no.  
 18 Q. (By Ms. Ford) And are you  
 19 distinguishing knowing that from hearing that or  
 20 something else?  
 21 A. No. That would be knowing it and  
 22 hearing it, fully aware of it, I wasn't.

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1 Q. (By Ms. Ford) Okay. Are you saying  
 2 that because Option -- the OptionCare accounts in  
 3 your territory did such small business, you may  
 4 not have noticed or --  
 5 MR. SCANNAPIECO: Objection, form.  
 6 A. Essentially, that's what I'm saying.  
 7 It didn't -- I have enough territory to pay  
 8 attention to my larger accounts and not so much  
 9 on lower business, smaller business. All  
 10 business is important, but I can only do so much  
 11 with them.  
 12 MS. FORD: Okay. The United States has  
 13 no further questions at this time. However, we  
 14 reserve the right to re-call Mr. Miser based upon  
 15 Abbott's continuing document production and  
 16 pending motion to his compel documents in this  
 17 case. And we will now pass the witness.  
 18 MR. ROSS: California has no questions  
 19 at this time.  
 20 MR. SCANNAPIECO: Okay. Regarding the  
 21 -- I mean Abbott doesn't necessarily agree to  
 22 reproduce Mr. Miser for any further testimony on

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1 the documents that are already in the possession  
 2 of the United States or the State of California,  
 3 I guess including any documents you may have  
 4 received this week, as we already covered those  
 5 during this deposition, and there are  
 6 approximately two and a half hours remaining in  
 7 the day of the deposition.  
 8 Other than that, we would just like to  
 9 say on the record that we would like the portions  
 10 of the testimony that relate to Mr. Miser's  
 11 personal background and/or Mr. Miser's financial  
 12 ties to Abbott and specific financial  
 13 compensation from Abbott be marked highly  
 14 confidential.  
 15 THE VIDEOGRAPHER: We are now going off  
 16 the record at 2:21 p.m.  
 17 \_\_\_\_\_  
 18 DARYL MISER  
 19 Subscribed and Sworn to before me this  
 20 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
 21 \_\_\_\_\_  
 22 Notary Public

63 (Pages 246 to 249)

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CERTIFICATE

I, Robin Prouty, a Certified Court  
Reporter in and for the State of Missouri, do hereby  
certify:

That prior to being examined, the witness  
was by me duly sworn;

That said deposition was taken down by me  
in shorthand at the time and place hereinbefore  
stated and was thereafter reduced to writing under  
my direction;

That I am not a relative or employee or  
attorney or counsel of any of the parties, or a  
relative or employee of such attorney or counsel, or  
financially interested in the action.

WITNESS my hand and seal this \_\_\_\_ day  
of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Robin Prouty, CCR No. 868

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# EXHIBIT 55

Morgan, Patricia Kay

August 27, 2007

Tampa, FL

Page 1

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

- - - - -x  
STATE OF ALABAMA, :  
Plaintiff, :  
vs. : Case No.: CV-05-219  
ABBOTT LABORATORIES, INC., : Judge Charles Price  
et al. :  
Defendants. :

- - - - -x  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----X  
In re: PHARMACEUTICAL :  
INDUSTRY AVERAGE WHOLESALE : MDL No. 1456  
PRICE LITIGATION : Civil Action No.  
: 01-12257-PBS  
THIS DOCUMENT RELATES TO: :  
:  
ALL ACTIONS :

-----X  
DEPOSITION OF PATRICIA KAY MORGAN

August 27, 2007

Henderson Legal Services  
202-220-4158

Morgan, Patricia Kay

August 27, 2007

Tampa, FL

<p style="text-align: right;">Page 26</p> <p>1 EXAMINATION</p> <p>2 BY MR. EDWARDS:</p> <p>3 Q. By my watch it's around 1:15. Thank you</p> <p>4 for appearing today, Ms. Morgan. I'm Steve</p> <p>5 Edwards. I represent Bristol-Myers Squibb in the</p> <p>6 case by the State of Alabama against a number of</p> <p>7 pharmaceutical manufacturers and many other cases</p> <p>8 as to which your deposition has been noticed here</p> <p>9 today.</p> <p>10 Why don't we start by asking you to state your</p> <p>11 name and address for the record.</p> <p>12 A. Patricia Kay Morgan, 700 South Harbour</p> <p>13 Island Boulevard, Tampa, Florida 33602.</p> <p>14 Q. And is it correct that you're here today</p> <p>15 pursuant to a subpoena?</p> <p>16 A. That's correct.</p> <p>17 Q. And is it also correct that you objected</p> <p>18 to the subpoena?</p> <p>19 A. That's correct.</p> <p>20 Q. So you're not here today voluntarily;</p> <p>21 you're here because a court ordered you to appear,</p> <p>22 correct?</p> <p>23 A. That's correct.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. First DataBank, as I understand it, is a</p> <p>2 company that reports product and pricing</p> <p>3 information on pharmaceutical products; is that</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. And First DataBank is owned by</p> <p>7 Hearst Corporation, is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And Hearst Corporation is a public</p> <p>10 company; it's not owned by any of the</p> <p>11 pharmaceutical manufacturers? Is that true?</p> <p>12 A. I don't believe it's a public company.</p> <p>13 Q. Okay. But it's not owned by any</p> <p>14 pharmaceutical manufacturers; is that true?</p> <p>15 A. That's true.</p> <p>16 Q. It's independent of the pharmaceutical</p> <p>17 manufacturers; is that fair?</p> <p>18 A. That's true.</p> <p>19 Q. Now, as I understand it, at First</p> <p>20 DataBank you were the manager of editorial</p> <p>21 services?</p> <p>22 A. That's correct.</p> <p>23 Q. And as such, you were responsible for</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. And you're represented by counsel here</p> <p>2 today; is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And that's Mr. Kern?</p> <p>5 A. Correct.</p> <p>6 Q. And he is also counsel for First</p> <p>7 DataBank; is that your understanding?</p> <p>8 A. That's correct.</p> <p>9 Q. And First DataBank is your former</p> <p>10 employer; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. As I understand it, you graduated from</p> <p>13 college in about 1975; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And you have a pharmacy degree?</p> <p>16 A. That's correct.</p> <p>17 Q. And then after college you worked at</p> <p>18 Abbott Labs from 1975 to sometime in 1999; is that</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And then you worked at First DataBank</p> <p>22 from 1999 till sometime in 2005?</p> <p>23 A. That's correct.</p>	<p style="text-align: right;">Page 29</p> <p>1 populating the drug database; is that correct?</p> <p>2 A. As far as the product and the pricing</p> <p>3 information.</p> <p>4 Q. And the pricing information that appeared</p> <p>5 in that database included average wholesale prices</p> <p>6 or AWP's; correct?</p> <p>7 A. We called it Blue Book AWP. But yes,</p> <p>8 there was that field.</p> <p>9 Q. And there were also wholesale net prices</p> <p>10 or wholesale acquisition costs also known as WAC?</p> <p>11 A. That's correct.</p> <p>12 MR. EDWARDS: That's W-A-C for the reporter.</p> <p>13 MR. KERN: Steve, let just interpose that --</p> <p>14 remind all the parties that the protective order</p> <p>15 does prohibit parties from asking about subject</p> <p>16 matter areas that were covered in prior depositions</p> <p>17 except as necessary to reasonably lay foundation,</p> <p>18 which I think you're doing.</p> <p>19 MR. EDWARDS: Which I'm trying to do.</p> <p>20 MR. KERN: Okay.</p> <p>21 BY MR. EDWARDS:</p> <p>22 Q. And as I understand it, you have</p> <p>23 testified about your work at First DataBank before;</p>

8 (Pages 26 to 29)

Morgan, Patricia Kay

August 27, 2007

Tampa, FL

<p style="text-align: right;">Page 226</p> <p>1 suggest an AWP.</p> <p>2 Q. Any other factors that you think a</p> <p>3 pharmaceutical manufacturer should consider when</p> <p>4 reporting prices to First DataBank?</p> <p>5 MS. TORGERSON: Objection to form.</p> <p>6 MR. KERN: Same objection.</p> <p>7 A. That's all that I know of.</p> <p>8 Q. Do you think it would be okay for a drug</p> <p>9 manufacturer to report prices to First DataBank</p> <p>10 with the intention of manipulating state Medicaid</p> <p>11 reimbursement formulas?</p> <p>12 MR. EDWARDS: Object to the form.</p> <p>13 MR. KERN: Same objections.</p> <p>14 A. You're asking me if I think that's okay?</p> <p>15 Q. Right.</p> <p>16 A. No, I do not.</p> <p>17 Q. That's improper, don't you agree?</p> <p>18 MR. KERN: Same objection.</p> <p>19 MR. EDWARDS: Objection.</p> <p>20 MS. TORGERSON: Object to form.</p> <p>21 A. I agree.</p> <p>22 MR. CARTER: That's all that I have.</p> <p>23 MR. KERN: Okay.</p>	<p style="text-align: right;">Page 228</p> <p>1 CERTIFICATE OF REPORTER OATH</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF HILLSBOROUGH</p> <p>4</p> <p>5 I, the undersigned authority, hereby certify</p> <p>6 that the witness named herein personally appeared before</p> <p>7 me and was duly sworn.</p> <p>8</p> <p>9 WITNESS my hand and official seal this</p> <p>10 _____.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 PATTY CARLSON, RPR, CRR</p> <p>16 NOTARY PUBLIC - STATE OF FLORIDA</p> <p>17 MY COMMISSION NO. DD232541</p> <p>18 EXPIRES: 9-19-07</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
<p style="text-align: right;">Page 227</p> <p>1 MR. EDWARDS: Thank you very much.</p> <p>2 (THEREUPON, the deposition of PATRICIA KAY</p> <p>3 MORGAN was concluded at 6:25 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 _____</p> <p>10 SIGNATURE OF THE WITNESS</p> <p>11 Subscribed and sworn to and before me</p> <p>12 this _____ day of _____, 20____.</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 Notary Public</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 229</p> <p>1 REPORTER'S DEPOSITION CERTIFICATE</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF HILLSBOROUGH</p> <p>4</p> <p>5 I, PATTY CARLSON, Registered Professional</p> <p>6 Reporter, Certified Realtime Reporter and Notary Public</p> <p>7 in and for the State of Florida at Large, hereby</p> <p>8 certify that the witness appeared before me for the</p> <p>9 taking of the foregoing deposition, and that I was</p> <p>10 authorized to and did stenographically and</p> <p>11 electronically report the deposition, and that the</p> <p>12 transcript is a true and complete record of my</p> <p>13 stenographic notes and recordings thereof.</p> <p>14 I FURTHER CERTIFY that I am neither an attorney,</p> <p>15 nor counsel for the parties to this cause, nor a</p> <p>16 relative or employee of any attorney or party connected</p> <p>17 with this litigation, nor am I financially interested in</p> <p>18 the outcome of this action.</p> <p>19 DATED THIS _____ at Tampa,</p> <p>20 Hillsborough County, Florida.</p> <p>21</p> <p>22</p> <p>23 _____</p> <p>PATTY CARLSON, RPR, CRR</p>

58 (Pages 226 to 229)

Henderson Legal Services  
202-220-4158



# EXHIBIT 56

00001  
 1 NO. GV002327  
 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
 2 EX REL. )  
 VEN-A-CARE OF THE )  
 3 FLORIDA KEYS, INC., )  
 PLAINTIFF(S), )  
 4 )  
 VS. ) TRAVIS COUNTY, TEXAS  
 5 )  
 DEY, INC.; ROXANE )  
 6 LABORATORIES, INC.; WARRICK )  
 PHARMACEUTICALS CORPORATION, )  
 7 SCHERING-PLOUGH CORPORATION, )  
 AND SCHERING CORPORATION, )  
 8 DEFENDANT(S). ) 53RD JUDICIAL DISTRICT  
 9  
 \*\*\*\*\*  
 10  
 ORAL AND VIDEOTAPED DEPOSITION OF  
 11 PATRICIA KAY MORGAN  
 12  
 NOVEMBER 13TH, 2002  
 13  
 (CONTAINS ATTORNEYS' EYES ONLY TESTIMONY)  
 14  
 \*\*\*\*\*  
 15  
 16 ORAL AND VIDEOTAPED DEPOSITION OF PATRICIA KAY  
 17 MORGAN, PRODUCED AS A WITNESS AT THE INSTANCE OF THE  
 18 PLAINTIFF(S), AND DULY SWORN, WAS TAKEN IN THE  
 19 ABOVE-STYLED AND NUMBERED CAUSE ON NOVEMBER 13TH,  
 20 2002, FROM 9:12 A.M. TO 7:03 P.M., BEFORE CYNTHIA  
 21 VOHLKEN, CSR IN AND FOR THE STATE OF TEXAS, REPORTED  
 22 BY MACHINE SHORTHAND, AT THE OFFICES OF PERKINS COIE,  
 23 LLP, 180 TOWNSEND STREET, 3RD FLOOR, SAN FRANCISCO,  
 24 CALIFORNIA PURSUANT TO THE TEXAS RULES OF CIVIL  
 25 PROCEDURE.

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Page 1

00002  
 1 A P P E A R A N C E S  
 2 FOR THE PLAINTIFF(S):  
 3 MR. JOSEPH V. CRAWFORD  
 MR. JARRETT ANDERSON  
 4 OFFICE OF THE ATTORNEY GENERAL  
 STATE OF TEXAS  
 5 POST OFFICE BOX 12548  
 AUSTIN, TEXAS 78711-2548  
 6  
 FOR THE RELATOR:  
 7 MR. JAMES JOSEPH BREEN  
 8 THE BREEN LAW FIRM, P.A.  
 P. O. BOX 297470  
 9 PEMBROKE PINES, FLORIDA 33029-7470  
 10 FOR THE DEFENDANT(S) DEY, INC.:  
 11 MR. STEPHEN M. HUDSPETH  
 COUDERT BROTHERS  
 12 1114 AVENUE OF THE AMERICAS  
 NEW YORK, NEW YORK 10036-7703  
 13  
 -AND-  
 14 MR. STEVEN A. FLECKMAN  
 15 FLECKMAN & MCGLYNN, P.L.L.C.  
 515 CONGRESS, SUITE 1800  
 16 AUSTIN, TEXAS 78701-3503  
 17 FOR THE DEFENDANT ROXANE LABORATORIES, INC.:  
 18 MR. R. ERIC HAGENSWOLD  
 SCOTT, DOUGLASS & MCCONNICO, L.L.P.  
 19 ONE AMERICAN CENTER, FIFTEENTH FLOOR  
 600 CONGRESS AVENUE  
 20 AUSTIN, TEXAS 78701  
 21 FOR THE DEFENDANTS WARRICK PHARMACEUTICALS  
 CORPORATION, SCHERING-PLOUGH CORPORATION AND  
 22 SCHERING CORPORATION:  
 23 MR. JOHN P. MCDONALD  
 LOCKE LIDDELL & SAPP, LLP  
 24 2200 ROSS AVENUE, SUITE 2200  
 DALLAS, TEXAS 75201-6776  
 25

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 1 FOR FIRST DATABANK AND THE WITNESS:  
 2 MS. NICOLE WONG  
 MR. JOHN PALMER KERN  
 3 PERKINS COIE LLP  
 180 TOWNSEND STREET, 3RD FLOOR  
 4 SAN FRANCISCO, CALIFORNIA 94107-1909  
 5  
 ALSO PRESENT:  
 6 MR. THOMAS A. TEMMERMAN AND  
 7 MR. WILLIAM S. SCHNEIDER,  
 CALIFORNIA OFFICE OF THE  
 8 ATTORNEY GENERAL  
 MR. ZACHARY TAYLOR BENTLEY, II  
 9 MS. ANNE ARNOLD  
 MR. BRIAN BOBBITT, VIDEOGRAPHER  
 10  
 11  
 12  
 13  
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 25

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1 Q. WERE YOU THE PERSON AT ABBOTT THAT WAS  
 2 RESPONSIBLE FOR SUBMITTING PRICING INFORMATION TO  
 3 FIRST DATABANK?  
 4 A. I WAS PRIMARILY THE PERSON THAT SUBMITTED THE  
 5 INFORMATION TO THE MEDICAIDS BECAUSE I DID DO THE  
 6 MAILINGS, ALONG WITH THE CLINICAL INFORMATION, AND AS  
 7 PART OF THAT FIRST DATABANK ALWAYS GOT A COPY OF THAT  
 8 CORRESPONDENCE.  
 9 Q. BRIEFLY CAN YOU DESCRIBE WHAT YOUR JOB  
 10 RESPONSIBILITIES WERE AT ABBOTT IN PLACING ABBOTT  
 11 PRODUCTS ON MEDICAID FORMULARIES?  
 12 A. MEDICAIDS CHANGED OVER TIME BECAUSE YOU HAD  
 13 THE OBRA '90 LEGISLATION THAT REQUIRED THE REBATES TO  
 14 THE MANUFACTURERS, SO -- BUT PRIOR TO THAT TIME I WAS  
 15 ACTUALLY INVOLVED WITH THE STATES THAT HAD FORMULARIES  
 16 AND MAKING PRESENTATIONS TO THOSE STATES TO MAKE SURE  
 17 THE PRODUCTS WERE ON THE FORMULARY.  
 18 AFTER OBRA '90 IT WAS MORE OF A FACT OF  
 19 NOTIFYING THE STATES THAT WE HAD INTRODUCED A NEW  
 20 PRODUCT OR HAD ADDED A NEW DOSAGE FORM, A NEW PACKAGE  
 21 SIZE. I DIDN'T DO PRICE UPDATE COMMUNICATIONS TO  
 22 THEM. IT WAS SIMPLY ADDITIONS OF NEW PRODUCTS.  
 23 Q. COULD YOU EXPLAIN THE SIGNIFICANCE OF OBRA  
 24 '90 AND ITS IMPACT ON A MANUFACTURER'S ABILITY TO GET  
 25 ON A STATE MEDICAID FORMULARY AGAIN?

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1 A. WHEN OBRA '90 WAS FIRST PASSED THE  
 2 MANUFACTURERS WERE TO PAY REBATES TO THE STATE BASED  
 3 ON THE UTILIZATION OF THEIR PRODUCTS. IN EXCHANGE FOR  
 4 THOSE REBATES ALL PRODUCTS WERE TO BE REIMBURSED BY  
 5 THE STATE AT THAT POINT IN TIME. THAT HAS  
 6 SUBSEQUENTLY CHANGED.  
 7 Q. WHAT'S CHANGED?  
 8 A. IT'S MY UNDERSTANDING, I MEAN, I'VE MOVED  
 9 AWAY FROM THAT AREA, BUT STATES MAY NOW PLACE PRODUCTS  
 10 ON PRIOR AUTHORIZATIONS AND NOT JUST HAVE WHAT'S  
 11 CALLED OPEN FORMULARIES WHERE THEY PAY FOR EVERYTHING.  
 12 Q. DO YOU KNOW WHEN THAT PRIOR AUTHORIZATION  
 13 BEGAN BEING USED?  
 14 A. NO, I DON'T.  
 15 Q. WAS IT FAIRLY RECENTLY?  
 16 A. IT WAS PROBABLY AT LEAST FIVE OR SIX YEARS  
 17 AGO, BUT IT SEEMS LIKE IT WAS YESTERDAY.  
 18 MR. FLECKMAN: AFTER TODAY IT WILL SEEM  
 19 LIKE FIVE OR SIX YEARS AGO.  
 20 MR. BREEN: YEAH. OBJECTION, FORM.  
 21 MR. FLECKMAN: I'LL REPHRASE IT.  
 22 MR. ANDERSON: GO AHEAD.  
 23 Q. (BY MR. ANDERSON) WELL, AFTER THE  
 24 IMPLEMENTATION OF OBRA '90 CAN YOU DESCRIBE THE  
 25 INFORMATION THAT -- THE PRICING INFORMATION WHICH YOU

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1 SUBMITTED ON BEHALF OF ABBOTT LABS TO STATE MEDICAIDS?  
 2 A. I SUBMITTED INFORMATION ON NEW PRODUCTS,  
 3 INCLUDING THE CLINICAL INFORMATION. AS PART OF  
 4 SUBMITTING NEW PRODUCTS THE PRICING WAS INCLUDED  
 5 THERE, BUT I DID NOT SUBMIT ONGOING PRICING UPDATES TO  
 6 THE STATE MEDICAIDS OR FIRST DATABANK.  
 7 Q. WAS THERE SOMEONE ELSE AT ABBOTT THAT WAS  
 8 RESPONSIBLE FOR SUBMITTING UPDATED PRICING TO THE  
 9 STATE MEDICAIDS?  
 10 A. THEY HAD A PRICING DEPARTMENT THAT DID THAT.  
 11 Q. WHAT PRICING WOULD YOU SUBMIT FOR NEW  
 12 PRODUCTS THAT WERE BEING ADDED TO STATE MEDICAID  
 13 FORMULARIES?  
 14 A. WE WOULD SUBMIT OUR LIST PRICE AND OUR  
 15 WHOLESALE ACQUISITION COST.  
 16 Q. WOULD ABBOTT SUBMIT AWP?  
 17 A. THEY WOULD SUBMIT ONE THAT WAS SUGGESTED,  
 18 YES.  
 19 Q. WAS IT TITLED AWP?  
 20 A. IT WAS ALWAYS WITH AN ASTERISK. IT WOULD SAY  
 21 AWP WITH AN ASTERISK AFTER IT.  
 22 Q. AND WHAT DID THE ASTERISK EXPLAIN?  
 23 A. IT'S BEEN A LONG TIME, BUT IT WAS SOMETHING  
 24 TO THE EFFECT THAT THE COMPANY DID NOT SET AWP BUT  
 25 THAT WAS WHAT THEY HAD CALCULATED IT TO BE BASED ON

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1 HISTORICAL AWP.  
 2 Q. WAS THERE ANY EXPLANATION PROVIDED REGARDING  
 3 THE WAC THAT ABBOTT SUBMITTED TO THE STATE MEDICAIDS?  
 4 A. NO, SIR.  
 5 Q. AND I THINK FROM YOUR PRIOR TESTIMONY YOU'RE  
 6 SAYING THAT YOU SUBMITTED THE SAME WAC PRICING FOR  
 7 THOSE PRODUCTS TO FIRST DATABANK AS WELL?  
 8 A. THAT'S CORRECT.  
 9 Q. AND AT THE TIME DID YOU UNDERSTAND THAT THAT  
 10 WAC PRICING WAS BEING -- WELL, STRIKE THAT.  
 11 IT'S YOUR TESTIMONY THAT WAC AND  
 12 WHOLESALE NET PRICING ARE SYNONYMS, RIGHT?  
 13 A. THAT'S CORRECT.  
 14 Q. DID YOU UNDERSTAND THAT WAC AND WHOLESALE NET  
 15 WERE SYNONYMS WHEN YOU WERE AT ABBOTT?  
 16 A. I DON'T THINK I EVEN UNDERSTOOD THE TERM  
 17 "WHOLESALE NET" WAS BEING USED AT THE TIME I WAS AT  
 18 ABBOTT BECAUSE I WAS VERY MUCH INTO THEIR VERNACULAR  
 19 AND WE ACTUALLY CALLED IT WHOLESALE PRICE AND LIST  
 20 PRICE.  
 21 Q. IS WHOLESALE PRICE ANOTHER ACRONYM FOR  
 22 WHOLESALE ACQUISITION COST?  
 23 A. MY UNDERSTANDING, YES.  
 24 Q. IS WHOLESALE PRICE -- I SAID ACRONYM, I MEANT  
 25 SYNONYM. PARDON ME. IS WHOLESALE PRICE ANOTHER

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1 SYNONYM -- I UNDERSTAND THAT YOU UNDERSTOOD WHAT I  
 2 SAID, BUT I'M GOING TO REPHRASE IT ALL --  
 3 A. THAT'S GREAT. THANK YOU.  
 4 Q. -- SO THE RECORD IS CLEAR.  
 5 A. THANK YOU. I APPRECIATE THAT.  
 6 Q. IS WHOLESALE PRICE A SYNONYM FOR WHOLESALE  
 7 ACQUISITION COST?  
 8 A. MY UNDERSTANDING, YES.  
 9 Q. IS WHOLESALE PRICE A SYNONYM FOR WHOLESALE  
 10 NET?  
 11 A. IN MY UNDERSTANDING ALL THOSE TERMS ARE THE  
 12 SAME.  
 13 Q. IN YOUR EMPLOYMENT AT FIRST DATABANK WHEN YOU  
 14 WOULD RECEIVE WAC PRICING FROM PHARMACEUTICAL  
 15 MANUFACTURERS DID YOU UNDERSTAND THAT THAT WAS  
 16 DISCOUNTED PRICING?  
 17 A. DISCOUNTED FROM WHAT, SIR?  
 18 Q. DID YOU UNDERSTAND THAT THAT PRICING HAD BEEN  
 19 DISCOUNTED?  
 20 MR. KERN: OBJECTION, VAGUE AND  
 21 AMBIGUOUS.  
 22 A. I'M NOT SURE WHAT YOU'RE ASKING ME.  
 23 Q. (BY MR. ANDERSON) ARE YOU AWARE OF ANY  
 24 DISCOUNT PRICES THAT ARE AVAILABLE IN THE  
 25 PHARMACEUTICAL INDUSTRY?

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1 A. LIKE VOLUME DISCOUNTS?  
 2 Q. VOLUME DISCOUNTS, YES. ARE YOU AWARE OF  
 3 THOSE?  
 4 A. I'M AWARE THAT THERE ARE VOLUME DISCOUNTS  
 5 OFFERED, YES.  
 6 Q. ARE YOU AWARE OF ANY OTHER DISCOUNTS IN THE  
 7 PHARMACEUTICAL INDUSTRY?  
 8 A. EARLY PAYMENT TERMS.  
 9 Q. ANY OTHERS?  
 10 A. NO, SIR.  
 11 Q. HAVE YOU EVER HEARD OF REBATES?  
 12 A. YES, SIR.  
 13 Q. ARE YOU AWARE THAT REBATES LOWER PRICES?  
 14 A. EARLIER WE WERE TALKING ABOUT THE REBATES  
 15 WITH OBRA WHERE THE MANUFACTURER GIVES BACK MONEY TO  
 16 THE STATE BASED ON THE UTILIZATION OF THEIR PRODUCTS.  
 17 SO YES, I'M AWARE THAT IT DOES LOWER THE PRICE TO THE  
 18 STATES.  
 19 Q. YOU'RE AWARE OF MEDICAID REBATES, I TAKE IT?  
 20 A. YES, I AM.  
 21 Q. ARE YOU AWARE OF OTHER REBATES THAT ARE  
 22 GRANTED TO PURCHASERS OF PHARMACEUTICALS LIKE  
 23 WHOLESALERS?  
 24 A. I HAVE NO SPECIFIC KNOWLEDGE, BUT I THINK  
 25 THERE'S THINGS REFERRED TO AS PERFORMANCE CONTRACTS

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1 THAT MAY BE BASED ON UTILIZATION AND I ASSUME THE  
 2 MECHANISM WOULD BE A REBATE, BUT I HAVE NO SPECIFIC  
 3 KNOWLEDGE OF THAT.  
 4 Q. HAVE YOU EVER HEARD OF THE TERM "CHARGEBACK"?  
 5 A. YES, SIR.  
 6 Q. WHAT'S YOUR UNDERSTANDING OF A CHARGEBACK?  
 7 A. MY UNDERSTANDING OF A CHARGEBACK IS WHERE THE  
 8 MANUFACTURER HAS A CONTRACT WITH A CUSTOMER SUCH AS A  
 9 HOSPITAL FOR A CERTAIN PRICE ON THE PRODUCT. THE  
 10 HOSPITAL IS BUYING IT FROM A WHOLESALER, BUT THE  
 11 MANUFACTURER HAD SOLD IT TO THE WHOLESALER AT A HIGHER  
 12 PRICE. SO THE WHOLESALER IN TURN SELLS IT TO THE  
 13 HOSPITAL AT THE PRICE THAT THE CONTRACT BETWEEN THE  
 14 MANUFACTURER AND THE HOSPITAL SAYS IT WILL BE SOLD AT  
 15 AND THE WHOLESALER CHARGES BACK TO THE MANUFACTURER  
 16 THE DIFFERENCE BETWEEN WHAT THEY PAID AND THE CONTRACT  
 17 PRICE TO THE HOSPITAL.  
 18 Q. WHEN DID YOU FIRST LEARN ABOUT CHARGEBACKS?  
 19 A. I BECAME AWARE OF THEM IN THE '80S.  
 20 Q. AND IN THE '80S YOU WERE EMPLOYED BY ABBOTT,  
 21 CORRECT?  
 22 A. THAT'S CORRECT.  
 23 Q. AND YOU WERE AWARE THAT CHARGEBACKS WERE  
 24 OCCURRING AT ABBOTT?  
 25 MR. KERN: OBJECTION, LEADING.

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1 A. THE HOSPITAL PRODUCTS DIVISION OF WHICH I WAS  
 2 NOT A MEMBER I KNOW WAS INVOLVED WITH CHARGEBACKS, BUT  
 3 I DO NOT HAVE ANY SPECIFIC KNOWLEDGE OF WHAT THOSE  
 4 WERE.  
 5 Q. (BY MR. ANDERSON) OTHER THAN HOSPITAL SALES  
 6 WERE YOU AWARE OF ANY OTHER TYPES OF CHARGEBACKS THAT  
 7 WERE OCCURRING WHILE YOU WERE EMPLOYED BY ABBOTT?  
 8 A. NO, SIR, I'M NOT.  
 9 Q. DOES ABBOTT SELL GENERIC DRUGS?  
 10 A. IT'S A VERY VAGUE TERM. I KNOW A LOT OF  
 11 PEOPLE THINK BRAND AND GENERIC IS PRETTY  
 12 STRAIGHTFORWARD, BUT IT'S A PRETTY COMPLEX TERM. THE  
 13 HOSPITAL PRODUCTS DIVISION OF ABBOT, WHICH I WAS NOT A  
 14 MEMBER OF, I THINK WOULD TRY TO SELL GENERIC DRUGS.  
 15 THE PHARMACEUTICAL DIVISION, OF WHICH I WAS A MEMBER,  
 16 WAS PRIMARILY A BRAND COMPANY OF WHICH PRODUCTS BECAME  
 17 GENERICS.  
 18 Q. IN THE LATE '80S AND EARLY '90S WERE YOU  
 19 AWARE THAT ABBOTT WAS SELLING GENERIC DRUGS?  
 20 A. I'M NOT TRYING TO BE DIFFICULT. WHERE I HAVE  
 21 A PROBLEM WITH YOUR QUESTION IS DEFINE GENERIC DRUG.  
 22 THEY WERE SELLING IN THE LATE '80S AND '90S PRODUCTS  
 23 WHICH HAD GENERICS OR HAD BECOME NO LONGER SINGLE  
 24 SOURCE.  
 25 Q. WELL, THIS MAY BE AN APPROPRIATE TIME. DO

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# EXHIBIT 57

February 13, 2008

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

In Re: PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE LITIGATION )MDL No. 1456  
\_\_\_\_\_)Civil Action No.  
United States of America, ex rel )01-12257 PBS  
Ven-a-Care of the Florida Keys, Inc, )Civil Action No.  
v )06-11337 PBS  
Abbott Laboratories, Inc. )

\_\_\_\_\_

Videotaped Deposition of Aaron Rayford, II,  
taken on behalf of the United States of America,  
pursuant to the stipulations agreed to herein, before  
Charisse Kitt, CCR and Registered Professional  
Reporter and Notary Public, held at Jones Day, 1420  
Peachtree Street, N.E., Atlanta, Georgia, Suite 800,  
on the 13th day of February, 2008, commencing at  
9:14 a.m.

Rayford, II, Aaron

February 13, 2008

<p style="text-align: right;">Page 102</p> <p>1 discussing Exhibit 5, right before we went off to 2 take a break and this is a September 2002 3 significant events report that you authored. 4 I want to go back to this bullet point on 5 the second page for Vital Care and ask you: Now, 6 earlier I noted that there seemed to be a typo in 7 the sentence that reads: Could loose business. 8 Loose, it says, L-O-O-S-E. Is it your 9 understanding that what the account manager, who 10 put that together or you meant was could lose, 11 L-O-S-E, business because of this lower Abbott AWP 12 on Vancomycin? 13 MR. SCANNAPIECO: Objection to form. 14 A. Yes. 15 Q. (By Mr. Scannapieco) And why is it that 16 Abbott might lose business with Vital Care due to 17 the \$6 AWP for its Vanco versus \$16 AWP for Lilly's 18 Vanco? 19 MR. SCANNAPIECO: Objection to form. 20 A. Well, it's known throughout the industry 21 that these guys purchase products based on AWP. 22 There is nothing we can do about it.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I didn't have -- I wasn't privy to that 2 information. 3 Q. (By Mr. Scannapieco) When you -- okay. 4 Well, you -- you're familiar with a term "AWP," 5 correct? 6 A. Correct. 7 Q. What's your understanding of what AWP 8 means? 9 A. Average wholesaler price. 10 Q. Okay. And what's your understanding of 11 who determines average wholesale price? 12 MR. SCANNAPIECO: Objection to form. 13 A. I don't know. 14 Q. (By Mr. Gobena) Do you know where the 15 average wholesale price is reported? 16 MR. SCANNAPIECO: Objection to form. 17 A. No. 18 Q. (By Mr. Gobena) Are you familiar with a 19 reporting competitor known as First Data Bank? 20 A. Yes. 21 Q. And are you familiar with the fact that 22 they publish a book called The Blue Book?</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. (By Mr. Scannapieco) When you say "these 2 guys" you're talking about Alternate Site 3 customers, generally? 4 A. Yes. 5 Q. So since -- if Abbott's AWP is \$10 less 6 than Lilly's, there's a strong likelihood that some 7 of these customers will decide not to buy Abbott's 8 Vancomycin; is that correct? 9 MR. SCANNAPIECO: Objection to form. 10 A. Yes. 11 Q. (By Mr. Scannapieco) Now, you began in -- 12 at Alternate Site in July of 2000, correct? 13 A. Yes. 14 Q. And Abbott's AWP for Vancomycin wasn't 15 always \$6, was it? 16 MR. SCANNAPIECO: Objection to form. 17 A. I don't know. 18 Q. (By Mr. Scannapieco) In fact, it was 19 significantly higher when you started in July of 20 2000, the Vancomycin -- the AWP for Vancomycin, 21 correct? 22 MR. SCANNAPIECO: Objection to form.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. No. 2 Q. Are you aware of the fact that First Data 3 Bank publishes AWP pricing information? 4 MR. SCANNAPIECO: Objection to form. 5 A. Yes. 6 Q. (By Mr. Gobena) Are you familiar with a 7 price publication known as Red Book? 8 A. Yes. 9 Q. And are you aware that Red Book publishes 10 AWP price information? 11 A. Yes. 12 Q. Are you familiar with a price publication 13 known as -- or a publisher known as Medispin? 14 A. No. 15 Q. Now, the AWP's that First Data Bank and 16 Red Book report or publish, rather, include AWP's 17 for Abbott's products, correct? 18 MR. SCANNAPIECO: Objection to form. 19 A. Yes. 20 Q. (By Mr. Gobena) Do you know whether or 21 not Abbott reported AWP price information to First 22 Data Bank?</p>

27 (Pages 102 to 105)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com



Rayford, II, Aaron

February 13, 2008

<p style="text-align: right;">Page 118</p> <p>1 Q. (By Mr. Scannapieco) Okay. Now, you</p> <p>2 testified earlier that you're familiar with list</p> <p>3 price and that was in connection with your</p> <p>4 testimony about your time at the Hospital Business</p> <p>5 Sector. Do you recall that?</p> <p>6 MR. SCANNAPIECO: Objection to form.</p> <p>7 A. Yes.</p> <p>8 Q. (By Mr. Gobena) And the list price for a</p> <p>9 Hospital Products Division drug is the same whether</p> <p>10 it's sold to a Hospital Business Sector customer or</p> <p>11 an Alternate Site customer, correct?</p> <p>12 A. I view this as Abbott Laboratories list</p> <p>13 price across the board.</p> <p>14 Q. And your job as a divisional sales</p> <p>15 manager, you are aware of the list prices for the</p> <p>16 drugs that were being sold to your customers,</p> <p>17 weren't you, generally?</p> <p>18 MR. SCANNAPIECO: Objection to form.</p> <p>19 A. No.</p> <p>20 Q. (By Mr. Scannapieco) Did you have access</p> <p>21 to list price information, if you wanted it?</p> <p>22 MR. SCANNAPIECO: Objection to form.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. (By Mr. Gobena) RxLink is limited purely</p> <p>2 to wholesale drug --</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Do you know whether list price for</p> <p>5 Abbott products, as used by the price reporting</p> <p>6 competitor that we talked about earlier, the Red</p> <p>7 Books, First Data Bank, do you know whether</p> <p>8 Abbott's list price is used to determine AWP?</p> <p>9 MR. SCANNAPIECO: Objection to form.</p> <p>10 A. No, I don't.</p> <p>11 Q. (By Mr. Gobena) But you did know -- you</p> <p>12 do know or have known, since your time as a</p> <p>13 divisional sales manager at Alternate Site, later,</p> <p>14 Hospira, that the AWP for Abbott or Hospira</p> <p>15 products is used by the Medicaid and Medicare</p> <p>16 programs to reimburse for those drugs for the</p> <p>17 customers, correct?</p> <p>18 MR. SCANNAPIECO: Objection to form.</p> <p>19 A. I know it's industry wide, how they get</p> <p>20 reimbursement from Medicare/Medicaid is based on</p> <p>21 the AWP.</p> <p>22 Q. (By Mr. Scannapieco) It's not just</p>
<p style="text-align: right;">Page 119</p> <p>1 A. I never requested it. I don't know.</p> <p>2 Q. (By Mr. Gobena) Did your account managers</p> <p>3 have access to list price information?</p> <p>4 MR. SCANNAPIECO: Objection to form.</p> <p>5 A. I don't know.</p> <p>6 Q. (By Mr. Gobena) Did you -- do you recall</p> <p>7 whether any sales were done to customers within</p> <p>8 your region, at list price, during your tenure as a</p> <p>9 divisional sales manager?</p> <p>10 A. I doubt it.</p> <p>11 Q. Is that because almost all of your</p> <p>12 customers in your region were on some sort of</p> <p>13 contract?</p> <p>14 MR. SCANNAPIECO: Objection to form.</p> <p>15 A. Exactly.</p> <p>16 Q. (By Mr. Gobena) And if they weren't on</p> <p>17 contract, would they use that RxLink price that we</p> <p>18 were talking about earlier today, to purchase</p> <p>19 Abbott products?</p> <p>20 MR. SCANNAPIECO: Objection to form.</p> <p>21 A. If they purchased it through the drug</p> <p>22 wholesaler company.</p>	<p style="text-align: right;">Page 121</p> <p>1 Abbott's AWP but everybody's AWP?</p> <p>2 A. Right.</p> <p>3 Q. And to the best of your knowledge, the</p> <p>4 products that were being sold to the customers</p> <p>5 within your region were being reimbursed sometimes</p> <p>6 by the Medicaid and Medicare programs, correct?</p> <p>7 MR. SCANNAPIECO: Objection to form.</p> <p>8 A. Yes.</p> <p>9 Q. (By Mr. Scannapieco) Now, you said that</p> <p>10 you -- sometimes customers would raise the issue of</p> <p>11 AWP up with you and you told them that you didn't</p> <p>12 talk about AWP. Do you recall that?</p> <p>13 A. Yes.</p> <p>14 Q. Why is it that you didn't talk about AWP</p> <p>15 with your customers when they raised it as an issue</p> <p>16 with you?</p> <p>17 A. It was against our policies and</p> <p>18 procedures.</p> <p>19 Q. Is there a specific written policy and</p> <p>20 procedure that you're referencing, when you say it</p> <p>21 was against your policies and procedures?</p> <p>22 A. It was based on our office ethics and</p>

31 (Pages 118 to 121)

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1 CERTIFICATE  
2 GEORGIA  
3 HENRY COUNTY:

4 I hereby certify, that the  
5 foregoing deposition was reported, as  
6 stated in the caption and the questions  
7 and answers thereto were reduced to the  
8 written page under my direction; that  
9 the foregoing pages 1 through 192  
10 represent a true and correct transcript  
11 of the evidence given. I further  
12 certify that I am not in any way  
13 financially interested in the result of  
14 said case.

15 Pursuant to Rules and  
16 Regulations of the Board of Court  
17 Reporting of the Judicial Council of  
18 Georgia, I make the following;  
19 disclosure:

20 I am a Georgia Certified Court  
21 Reporter. I am here as an independent  
22 contractor for Henderson Legal Services.

Page 219

1 I was contacted by the offices  
2 of Henderson Legal Services. to provide court  
3 reporting services for this deposition.  
4 I will not be taking this deposition  
5 under any contract that is prohibited by  
6 O.C.G.A. 15-14-7 (a) or (b).

7 I have no written contract to  
8 provide reporting services with any  
9 party to the case, any counsel in the  
10 case or any reporter or reporting agency  
11 from whom a referral might have been  
12 made to cover this deposition. I will  
13 charge my usual and customary rates to  
14 all parties in the case.

15 this, the 13th day of February,  
16 2008.

17  
18  
19  
20 \_\_\_\_\_  
21 Charisse Kitt, CCR-B-2528.  
22 My commission Expires.  
May 2, 2010.

56 (Pages 218 to 219)

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# EXHIBIT 58

**EXPERT REPORT OF DR. BRIAN REISETTER**

**I. BACKGROUND AND EXPERIENCE**

1. My name is Dr. Brian Charles Reisetter. I am submitting this report at the request of Abbott Laboratories Inc.
2. I graduated in 1980 with a Bachelor of Science (BS) degree in Pharmacy at Drake University in Des Moines, IA. I graduated from Drake University in 1987 with a Master of Business Administration (MBA). I completed extensive graduate work at the University of Illinois at Chicago (UIC) in the Doctor of Philosophy (PhD) program from 1993 until 2000. The emphasis of this graduate work was social science and communication as they relate to the profession of pharmacy.
3. In 2002, I graduated from the University of Mississippi with a Doctor of Philosophy (PhD) in Pharmacy Administration with an emphasis in Pharmaceutical Marketing.
4. In conjunction with my graduate academic work, I was a teaching assistant (TA) at both the University of Illinois at Chicago and the University of Mississippi in several courses, including Pharmacy Law and Pharmacy Communications.
5. I am currently an instructor for one course at the University of Mississippi, College of Pharmacy, entitled The Techniques of Pharmaceutical Sales. I have taught this course for six consecutive years.
6. I have been licensed as a pharmacist in the State of Iowa since 1985. I was also licensed to practice pharmacy in the State of Illinois from 1992 until 2000. I am currently licensed as a pharmacist in the State of Mississippi.
7. Since licensed in 1985, I have practiced pharmacy full-time (1985-1987, 1992-1998) and part-time (1998-2000) in retail pharmacy (chain and independent) and in hospital pharmacy (inpatient and outpatient) in the states of Illinois and Iowa. My experience as a pharmacist included Long-Term Care (LTC). As a retail pharmacist, my duties included purchasing and claims submissions to public and private third party payers of drugs, including Medicaid, for the stores where I was contracted or employed.
8. I was a professional sales representative for Eli Lilly and Co., Inc., from 1987 until 1992. My territory was based out of Des Moines, IA.
9. I served as Director of Pharmacy at Chicago Lakeshore Hospital Pharmacy in Chicago, IL, from 1992 until 1998 in conjunction with my previous corporation, Reisetter Pharmacy Health Services, Inc. (RPHS). During that time, I was fully responsible for prescription and non-prescription pharmaceutical product purchasing for the hospital. I was also a member of the Pharmacy and Therapeutics (P&T) Committee and the Risk Management Committee as part of my normal duties.

10. Through RPHS, I have consulted for several clients regarding marketing issues in the pharmaceutical industry. RPHS was active as a corporation from 1994 through 2001.
11. I was a contracted "relief" pharmacist in both Illinois and Iowa through RPHS for independent and chain pharmacies needing pharmacists for limited amounts of time. I would often manage or operate independent pharmacies for the owners while they were sick or on vacation. My activities in this role included product purchasing and claims submission for all prescriptions dispensed.
12. I am a founding partner of Medical Marketing Economics, LLC (MME), where we work extensively with the pharmaceutical industry in the areas of pricing, marketing strategy and market research. MME also provides limited litigation support and expert witness testimony.
13. Through my education, research, professional experiences in the pharmaceutical industry and in the practice of pharmacy, and my work with MME, I have extensive knowledge of pharmaceutical marketing and promotion.
14. My experience, publications, and prior testimony are provided in detail in my CV.
15. Medical Marketing Economics (MME) is being compensated at a rate of \$450 per hour for my work in this matter.

## **II. TASKS REQUESTED**

16. I have been asked to testify on the following subject matters:
  - a. How pharmaceutical companies market their products, specifically:
    - i. How companies develop an overall marketing strategy for their products, and how those strategies are implemented.
    - ii. The frequency and modes of communication companies use to implement an overall marketing strategy for a product, both to internal members of the company and to the market participants (*e.g.*, customers).
  - b. How any strategy to market the difference between acquisition cost and the reimbursement amount ("the spread") for products would be implemented, and what sources of evidence would exist if such a strategy were designed and implemented.
  - c. The methodology employed by Dr. Matthew Perri in his expert report submitted in this matter and the conclusions that he draws.
17. To complete this task, I have relied upon my education, knowledge, experience, and a review of the materials that are provided in the attached schedule.

### III. FINDINGS AND OPINIONS

#### *Pharmaceutical Marketing and Marketing Theory*

18. Pharmaceutical companies are sophisticated businesses that utilize organized marketing efforts to support their products. Pharmaceutical marketing is well developed, systematic, and consistent. Corporate marketing decisions are not made in a simplistic or arbitrary fashion, but are part of a systematic process in which all marketing activities are consistent with a specific strategy for a product or product line.
19. Pharmaceutical marketing activities are typically presented in four distinct categories: 1) product, 2) promotion, 3) placement (distribution) and 4) price.<sup>1</sup> These categories are not specific to pharmaceutical marketing, but are standard in overall marketing theory. In the pharmaceutical industry, marketing activities in these four categories interact, complement each other, and are part of an overall marketing strategy for a particular product or product line.
20. For example, if a company had an overall marketing strategy to create value through being the “lowest cost, quality alternative,” the marketing of that value would be consistent throughout each of the “Ps” of marketing. Setting the *price* lower than the alternative products alone would not suffice within this strategy. The *product* must be of similar or equal quality before this strategy could be employed. Distribution (*placement*) would have to be designed to make the product equally available as an alternative. As important, this message of the “low cost, quality alternative” would be consistently *promoted* to potential customers, typically through multiple promotion and advertising media.

#### *What “Marketing the Spread” Would Entail*

21. Dr. Perri, in his report, concludes that Abbott marketed the products in question based upon the spread. I disagree that any such conclusion can be drawn from the evidence cited in Dr. Perri’s report.
22. The idea of “marketing the spread” is akin to creating an overall product goal to maximize profits for providers through reimbursement by third parties. If a company employed a strategy to market the spread, product managers, sales representatives, and other marketers would incorporate that goal explicitly and continuously into all the activities of the product. These activities would span all areas of marketing (*e.g.*, the 4-Ps of marketing); therefore, one would expect to see consistent, explicit, systematic and continuous evidence that such a marketing plan were in place. Evidence of such a marketing strategy would exist in several forms, including internal discussions of the specific marketing plan, training materials explicitly outlining the goals and activities, research to determine if this

---

<sup>1</sup> Mickey C. Smith, *Pharmaceutical Marketing: Strategy and Cases*, 1<sup>st</sup> ed. (1991), p. 11-13.

plan was the appropriate course of action, and promotional materials to aid account representatives in presenting this explicit message to customers.

23. A strategy to market the spread, if implemented, would be communicated consistently and persistently throughout the company or relevant business unit. Because the process of marketing includes all four elements of price, product, placement, and promotion, an expert in pharmaceutical marketing would expect to see evidence of this overall strategy from multiple sources consistently over time in each of these discrete categories.
24. A marketing plan does not just “happen” at large pharmaceutical companies, and it is not dictated or defined by the isolated actions of individuals. The marketing strategies and resultant marketing plans are discussed, researched extensively, presented at internal meetings, then eventually (if approved) built in to a part of the overall product plan. Once approved, promotional messages are tested, promotional materials are created, representatives are trained, potential customers for the message are identified, and the message is delivered as planned. Throughout the process, there are constant feedback mechanisms and each component is evaluated for refinement or abandonment based on evolving market conditions or competitive response. Evidence of these activities would include (but not be limited to):
  - a. Consistent documentation as to how to best market the message of provider profitability.
  - b. Continuous process of building a product strategy and core message around the topic of marketing the spread.
  - c. Consistent and continuous research on the issue of provider profitability as a potential driver of sales.
  - d. Extensive and explicit research on the correct messages and materials to be used by representatives to promote the spread.
  - e. Evidence of continuous competitive intelligence research in the area of competitor pricing and “spread.”
  - f. Continuous internal training on how providers are compensated as a basis for making decisions on marketing the spread, including specific training on provider compensation by payer type and geographical region.
  - g. On-going and explicit development of training materials needed for marketing the spread.
25. Once past the planning stage and entering the implementation stage, companies must train their representatives as to how this message should be conveyed. That process would include both training personnel and developing the tools necessary for delivering the message. These activities would include (but not be limited to):



- a. Explicit dissemination of the goal of maximizing provider reimbursement continuously over time.
  - b. Consistent use of this strategy as a metric for sales representative evaluation and performance goals.
  - c. Training materials for account representatives that are continuously revised for training existing and new hires. This information would include specific training for each sales representative and account managers on (at a minimum):
    - i. Regional and State differences in reimbursement and how that would affect the promotional message.
    - ii. How reimbursement has changed over time and how changes in promotion must change as a result.
  - d. Multiple versions of promotional materials including advertising pieces explaining to customers how Abbott products increased profits through maximizing reimbursement
  - e. Lectures, presentations, and internal training materials consistently and explicitly outlining the strategy of profit maximization for the provider as a goal of each sales presentation.
  - f. Internal correspondence and feedback as to the success of the strategy in the field—resulting in potential refining of the message
26. A strategy that focused on maximizing the spread for customers would drive all product pricing decisions as well. As such, one would expect to see consistent and continuous internal discussions of pricing actions, in the context of maximizing payer reimbursement. Pricing decisions based on this strategy would rely on extensive market research specifically designed to determine how to structure prices to maximize profitability based on the spread.
27. Based on the evidentiary material that Dr. Perri presented in his report, I disagree with his conclusion that Abbott had a marketing strategy based upon the spread. The evidence simply does not reveal the type of continuous, systematic and explicit indicia of a marketing strategy as outlined above.
28. To the contrary, the evidence that Dr. Perri presented and I reviewed is most consistent with Abbott employing a marketing strategy as outlined in the training materials prepared for sales representatives. These representatives were trained to market the products based upon:
- a. Breadth of product line.
  - b. Breadth of available packaging within that product line.



- c. Reliability of supply and multiple sources from which to purchase products (distribution options).
- d. Competitive pricing.
- e. Customer service.<sup>2</sup>

*"Case Study" Method Employed by Dr. Perri*

- 29. Dr. Perri purports to utilize a case study methodology to draw conclusions regarding Abbott's corporate conduct as well as its perceptions, knowledge, and intentions.
- 30. The case study methodology is a seldom employed methodology that is utilized when preferred standard experimental design or quasi-experimental design are not possible. A leading publication acknowledges that "as a research endeavor, case studies have been viewed as a less desirable form of inquiry than other experiments or surveys."<sup>3</sup> Because this type of research usually involves a single occurrence of an event, standard statistical comparisons between groups are not possible.
- 31. Because of the inherent nature of the design and data collection within standard case study methods, it is particularly important that these studies be properly designed and implemented with the utmost scientific rigor. If one fails to comply with standard methods, the study results are inherently unreliable.
- 32. The case study methodology is commonly known to be susceptible to bias, meaning that the evaluator "has allowed equivocal evidence or biased views to influence the directions of the findings and conclusions."<sup>4</sup> If such bias is present, then the study results will be compromised.
- 33. The case study methodology requires more than a researcher simply reviewing evidence and providing a subjective opinion regarding what that evidence means.
- 34. When properly employed to prevent such bias, any case study research that is intended to yield conclusions (*e.g.*, whether Abbott had a strategy of marketing the spread) should, prior to any data collection, include the following processes:
  - a. Identify the theoretical framework or underpinnings on which evidence will be evaluated.
  - b. Identify the research hypotheses or propositions, based on the above theoretical framework.

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<sup>2</sup> See, *e.g.*, Rayford deposition, Ex. 10.

<sup>3</sup> Robert K. Yin, *Case Study Research: Design and Methods*, 3d ed., p. 10.

<sup>4</sup> Yin, p. 10.

- c. Identify the pattern of evidence that one would expect to see that would support or not support the research hypotheses or propositions.
  - d. Develop a protocol for data collection that identifies how data should be reviewed and coded, and how themes will be identified, categorized and analyzed.
35. Based on his report and deposition, Dr. Perri did not utilize these generally accepted processes known to be standard within case study methodology. Dr. Perri did not identify a theoretical framework for this research<sup>5</sup>, did not identify hypotheses or propositions, did not *a priori* identify the patterns of evidence one would expect to see if Abbott had a strategy of marketing the spread, and did not provide a structured system of analysis for the data he reviewed.
36. Of most concern were the methods Dr. Perri employed during the analysis phase of his research. Case study methodology requires that investigators “attend to *all* the evidence, display and present the evidence separate from any interpretation, and show adequate concern for exploring alternative interpretations.” (emphasis in original)<sup>6</sup> Rather than following this crucial principle, Dr. Perri has been selective in the facts he uses to support his opinion that Abbott’s strategy was one of marketing the spread.
37. For example, Dr. Perri identifies only one Abbott sales representative (Mr. Lotz) who claims to have affirmatively marketed the spread to customers as support for his conclusion that Abbott had a corporate strategy of marketing the spread. He places little or no weight on the testimony of all the other Abbott employees who denied marketing the spread and who testified that they understood it was Abbott’s policy not to do so. He also fails to take into account that Mr. Lotz had a limited sales territory, marketed the spread only for a short period of time, was instructed by his manager to stop this activity when the manager found out what he had been doing, and immediately stopped the activity as his manager instructed.<sup>7</sup>
38. Due to these flaws in methodology, Dr. Perri’s conclusions regarding Abbott’s corporate conduct, and its intentions, knowledge and perceptions, cannot be considered scientifically reliable or valid.
39. I reserve the right to amend or supplement my opinions as new information is provided in this matter.

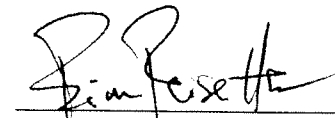
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<sup>5</sup> Deposition of Dr. Matthew Perri, February 4, 2009, p. 197.

<sup>6</sup> Yin, p. 109.

<sup>7</sup> Deposition of William G. Lotz, August 9, 2006, p. 97.

Dated: March 5, 2009

A handwritten signature in black ink, appearing to read "Brian Reisetter", written over a horizontal line.

Dr. Brian Reisetter

# EXHIBIT 59

Renick, Anne Marie

March 17, 2008

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY ) MDL DOCKET NO.  
AVERAGE WHOLESALE PRICE ) CIVIL ACTION  
LITIGATION. ) 01CV12257-PBS  
----- )

The videotaped deposition of ANNE MARIE  
RENICK, called by the United States for examination,  
taken pursuant to subpoena and pursuant to the Federal  
Rules of Civil Procedure for the United States District  
Courts pertaining to the taking of depositions, taken  
before Rachel F. Gard, Certified Shorthand Reporter, at  
11 South LaSalle Street, Suite 1200, Chicago, Illinois,  
commencing at 9:08 a.m. on the 17th day of March, A.D.,  
2008.

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dee0c0c9-a197-46e8-9784-045f67f6b49f

Renick, Anne Marie

March 17, 2008

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 U.S. DEPARTMENT OF JUSTICE</p> <p>4 CIVIL DIVISION</p> <p>5 MS. ANN ST. PETER-GRIFFITH</p> <p>6 99 N.E. 4th Street</p> <p>7 Miami, Florida 33132</p> <p>8 Phone: (305) 961-9003</p> <p>9 Email: ann.st.peter-griffith@usdoj.gov</p> <p>10 On behalf of the United States;</p> <p>11</p> <p>12 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE</p> <p>13 BUREAU OF MEDI-CAL FRAUD &amp; ELDER ABUSE</p> <p>14 MR. RAYMOND LIDDY</p> <p>15 110 West A Street</p> <p>16 Suite 1100</p> <p>17 San Diego, California 92101</p> <p>18 Phone: (619) 688-6043</p> <p>19 Email: raymond.liddy@doj.ca.gov</p> <p>20 Telephonically on behalf of the State of</p> <p>21 California;</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES: (Continued)</p> <p>2 STETLER &amp; DUFFY, LTD.</p> <p>3 MR. DAVID J. STETLER</p> <p>4 11 South LaSalle Street</p> <p>5 Suite 1200</p> <p>6 Chicago, Illinois 60603</p> <p>7 Phone: (312) 338-0200</p> <p>8 On behalf of the deponent.</p> <p>9</p> <p>10</p> <p>11 ALSO PRESENT: Anthony Micheletto, videographer</p> <p>12</p> <p>13</p> <p>14 * * * * *</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 ANDERSON, LLC</p> <p>4 MR. C. JARRETT ANDERSON</p> <p>5 208 West 14th Street</p> <p>6 Suite 3-B</p> <p>7 Austin, Texas 78701</p> <p>8 Phone: (512) 469-9191</p> <p>9 Email: jarrett@anderson-llc.com</p> <p>10 Telephonically on behalf of the Relator</p> <p>11 Ven-A-Care of the Florida Keys, Inc.;</p> <p>12</p> <p>13 JONES DAY</p> <p>14 MS. TARA FUMERTON</p> <p>15 77 West Wacker Drive</p> <p>16 Chicago, Illinois 60602</p> <p>17 Phone: (312) 782-3939</p> <p>18 Email: tfumerton@jonesday.com</p> <p>19 On behalf of Abbott Laboratories;</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 5</p> <p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 ANNE MARIE RENICK</p> <p>4 Examination by Ms. St. Peter-Griffith 8</p> <p>5 Examination by Mr. Anderson 189</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 RENICK EXHIBIT PAGE</p> <p>9 Exhibit Renick 001 AR 00001 - AR 00003 15</p> <p>10 Exhibit Renick 002 Anne Renick produced documents 88</p> <p>11 retained by Mr. Stetler</p> <p>12 Exhibit Renick 003 ABT-DOJ 026779 - 106</p> <p>13 ABT-DOJ 0267790</p> <p>14 Exhibit Renick 004 TXABT 158511 108</p> <p>15 Exhibit Renick 005 ABT-DOJ 0233926 - 111</p> <p>16 ABT-DOJ 0233987</p> <p>17 Exhibit Renick 006 ABT-DOJ 0228282 - 127</p> <p>18 ABT-DOJ 0228287</p> <p>19 Exhibit Renick 007 ABT-DOJ-E 0047744 - 132</p> <p>20 ABT-DOJ-E 0047756</p> <p>21 Exhibit Renick 008 ABT-DOJ-E 0047520 - 136</p> <p>22 ABT-DOJ-E 0047525</p>

2 (Pages 2 to 5)

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Renick, Anne Marie

March 17, 2008

<p style="text-align: right;">Page 90</p> <p>1 prohibitions against discussing certain pricing 2 with Abbott's Alt Site customers? 3 MS. FUMERTON: Objection, form. 4 BY THE WITNESS: 5 A. A prohibition? Not -- Not that I can 6 recall when I was a sales rep. 7 Q. Okay. Do you recall other training 8 concerning that? 9 A. I mean, I -- I went through training at 10 various points in time with Abbott on, you know, 11 how you can sell your products, how you can price 12 them, how you can, you know, discuss pricing. 13 Q. What -- Were there any prohibitions 14 against your discussing list pricing or AWP with 15 your clients at the time you were a sales rep in 16 Alt Site? 17 A. Well, list price is a public price; so I 18 can't recall ever being told you can't discuss 19 something that is public. 20 Q. Okay. 21 A. AWP didn't come up. It wasn't anything 22 that we talked about.</p>	<p style="text-align: right;">Page 92</p> <p>1 reimbursement purposes? 2 A. It may be. 3 Q. When you were working with the Alt Site 4 customers as a sales rep, did you discuss with them 5 contract price? 6 A. Contract, yes. 7 Q. Did you discuss with them reimbursement 8 issues? 9 A. No. 10 Q. Now, I'm going to fast-forward, okay, to 11 when you worked for that five-year period on the 12 various products as a general manager. Is it 13 general manager? 14 A. No, marketing. 15 Q. Marketing. 16 A. Marketing manager. 17 Q. Marketing manager, yes, I'm sorry. 18 A. I wish I was a general manager. 19 Q. Okay. Within HPD, excuse me. As a 20 marketing manager for injectable -- or I'm sorry, 21 yeah. As a marketing manager for injectable 22 products -- I almost called you a general manager</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. When you say that "we talked 2 about," who are you talking about? 3 A. As a sales rep. 4 Q. Do you remember there being any practice 5 or policy concerning the discussion -- discussing 6 AWP's or spread with Alternate Site customers? 7 MS. FUMERTON: Objection, form. 8 BY THE WITNESS: 9 A. Practice or policies? I guess AWP was 10 not part of what we talked about. It's not how we 11 sold our products. We had contract prices. 12 Q. Okay. Do you have an understanding as to 13 what AWP spread is? 14 A. Yes. 15 Q. What is it? 16 A. It is the difference between the 17 wholesale acquisition price, and then it is a -- 18 how some customers are reimbursed based on AWP. 19 Q. Okay. So is it the difference between 20 the contract price and the AWP? 21 A. For what? 22 Q. For -- On a particular product for</p>	<p style="text-align: right;">Page 93</p> <p>1 again -- did you have an understanding of how list 2 pricing may impact or how AWP may impact the 3 Alternate Site market as compared to the hospital 4 market? 5 MS. FUMERTON: Objection, form. 6 BY THE WITNESS: 7 A. Yes. 8 Q. Okay. What was that understanding? 9 A. At certain times, certain products were 10 sold more in the Alternate Site market, that it 11 could be a concern but it didn't matter. 12 Q. Okay. Let's break that down. What do 13 you mean it could be a concern? 14 A. That the Alt Site folks occasionally, 15 when we were launching a product, may be interested 16 in how we were doing it. 17 Q. How come? 18 A. Because they may have, you know, greater 19 sales or have customers who will buy that product. 20 Q. Okay. So why would that be of concern? 21 A. I don't know. 22 Q. When you say it didn't matter, what does</p>

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Renick, Anne Marie

March 17, 2008

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1 UNITED STATES OF AMERICA     )  
 2 NORTHERN DISTRICT OF ILLINOIS   )  
 3 EASTERN DIVISION             ) SS.  
 4 STATE OF ILLINOIS            )  
 5 COUNTY OF COOK              )  
 6

7 I, Rachel F. Gard, Certified Shorthand  
 8 Reporter, do hereby certify that ANNE MARIE RENICK was  
 9 first duly sworn by me to testify to the whole truth and  
 10 that the above videotaped deposition was reported  
 11 stenographically by me and reduced to typewriting under  
 12 my personal direction.

13 I further certify that the said videotaped  
 14 deposition was taken at the time and place specified and  
 15 that the taking of said videotaped deposition commenced  
 16 on the 17th day of March, A.D., 2008, at 9:08 a.m. at  
 17 the offices of Stetler & Duffy, Ltd., 11 South LaSalle  
 18 Street, Suite 1200, Chicago, Illinois.

19 I further certify that I am not a relative or  
 20 employee or attorney or counsel of any of the parties,  
 21 nor a relative or employee of such attorney or counsel,  
 22 nor financially interested directly or indirectly in

Page 227

1 this action.  
 2

3 In witness whereof, I have hereunto set my  
 4 hand and affixed my seal of office this 31st day of  
 5 March, A.D., 2008.  
 6  
 7  
 8  
 9  
 10

11 RACHEL F. GARD, CSR  
 12 CSR No. 084-003324  
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# EXHIBIT 60

Louisville, KY

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X

In re: PHARMACEUTICAL INDUSTRY )

AVERAGE WHOLESALE PRICE )

LITIGATION ) MDL No. 1456

\_\_\_\_\_ ) Civil Action No.

) 01-12257-PBS

THIS DOCUMENT RELATES TO: )

) Judge Patti B.

) Saris

United States of America, ex rel. )

Ven-a-Care of Florida Keys, Inc., ) Magistrate Judge

v. Abbott Laboratories, Inc., ) Marianne Bowler

CIVIL ACTION NO. 06-11337-PBS )

-----X

\*\*\* HIGHLY CONFIDENTIAL \*\*\*

Deposition of GERIMED by

SUSAN M. RHODUS, R. Ph., CGP

JANUARY 23, 2008

LOUISVILLE, KENTUCKY

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## Louisville, KY

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1 passing the -- the witness to Mr. Anderson, who's  
2 representing the Relator.

## EXAMINATION

BY MR. ANDERSON:

6 Q. Good afternoon, ma'am. I have some  
7 questions for you, but I'll try to move quickly.

8 If I understand your prior testimony  
9 correctly, GeriMed represents member pharmacies  
10 that are primarily pharmacies in facilities such  
11 as nursing homes; is that correct?

12 A. They're not in the facilities. They're  
13 servicing facilities.

14 Q. Okay. Thank you.

15 A. They don't necessarily have to be in  
16 the facility themselves.

17 Q. I see.

18 But they're closed-door pharmacies that  
19 service facilities such as nursing homes; is that  
20 correct?

21 A. Correct.

22 Q. Okay. And then IVMed is a business

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1 name of GeriMed's, correct?

2 A. Correct.

3 Q. And IVMed typically represents member  
4 pharmacies that are home infusion pharmacies; is  
5 that correct?

6 A. Correct.

7 Q. And then GeriMed also does business  
8 under the name RxMed, correct?

9 A. Correct.

10 Q. And RxMed is an organization or a  
11 business name that represents member pharmacies  
12 that are primarily retail pharmacies, correct?

13 A. Correct.

14 Q. And then under each of those business  
15 names, GeriMed attempts to negotiate pricing with  
16 drug companies on numerous drug products for  
17 those member pharmacies, correct?

18 A. Correct.

19 Q. And in doing so, one of the benefits of  
20 bringing all of these pharmacies together is to  
21 have synergy with size and increased bargaining  
22 power, correct?

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1 A. Correct.

2 Q. And in addition, GeriMed also strives  
3 to determine which drug products will be most  
4 profitable for member pharmacies to dispense,  
5 correct?

6 MR. COOK: Objection.

7 THE WITNESS: For the contracts that we  
8 have available, to tell them which of those  
9 products would be the best for them to purchase  
10 for profitability, yes.

BY MR. ANDERSON:

12 Q. Right.

13 And part of the equation that GeriMed  
14 utilizes to ascertain which products may be most  
15 profitable is AWP, correct?

16 A. It was -- it was -- yes, it was in the  
17 past. Today, the way the reimbursement is, it's  
18 not necessarily something we look at as -- as  
19 much.

20 Q. In the past couple of years, some  
21 payors have moved away from AWP as a -- a basis  
22 for reimbursement?

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1 A. The world has changed with Medicare  
2 Part D. And now you have insurance plans who are  
3 involved in the marketplace who primarily pay  
4 everything on MAC.

5 Q. And --

6 A. For generic products.

7 Q. Right.

8 And you referenced Medicare Part D.

9 Did you reference that program because  
10 it does not reimburse based on AWP?

11 A. No. I referenced that program because  
12 the insurance companies use a MAC for a lot of  
13 products, versus what happened in the past with  
14 how the system was set up.

15 Q. Okay. Looking back in the past, how  
16 did Abbott go about ensuring that member  
17 pharmacies would comply with purchasing products  
18 that GeriMed had identified as most profitable?

19 MR. COOK: Objection.

20 THE WITNESS: The -- the way that  
21 GeriMed always did business is, we look at  
22 several different pieces of -- of pie. We look

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1 at -- we do not make a decision solely on one  
 2 thing. We look at the efficacy of the drug,  
 3 which an AB rating would be efficacy in a generic  
 4 product. We look at the cost of the drug, which  
 5 is extremely important. If it's not a low cost  
 6 drug, then we don't award that product at all.

7 We do look at AWP spread as another  
 8 piece of what we look at. And we also look at  
 9 the availability of the drug. And -- and by  
 10 availability, I'm talking if -- if the  
 11 wholesalers don't stock the product, if you can't  
 12 get it anywhere, then you could have the cheapest  
 13 price or the best spread and it doesn't matter.  
 14 You can't get the product.

15 And then we looked at a relationship  
 16 with the companies that we did business with to  
 17 make sure that they were working with us on  
 18 education and other programs that we wanted to do  
 19 with other membership.

20 So, all of those things combined is how  
 21 we made our awards to determine which products  
 22 that we put on our contracts.

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1 BY MR. ANDERSON:

2 Q. And in considering those factors, did  
 3 GeriMed ultimately strive to choose one generic  
 4 product in a given therapeutic class as the  
 5 preferred generic?

6 A. It would depend on the product and  
 7 depend on the offer that we receive from the  
 8 pharmaceutical company. Some products we did  
 9 that with, and some products we did not. And I  
 10 would say in most cases, if you look at the  
 11 majority of them, we -- we did a lot of dual  
 12 awards. Again, availability of the product and  
 13 making sure that we have a low cost product  
 14 available to people was extremely important.

15 Q. Now, in evaluating these factors in  
 16 selecting a product or, in the case of a dual  
 17 award, two products, you'll agree that AWP, or  
 18 spread, was one of the factors, correct?

19 A. One of the factors, yes.

20 Q. How did GeriMed go about ensuring or  
 21 promoting compliance by its member pharmacies  
 22 with the GeriMed selected product?

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1 A. We published our -- our binder that had  
 2 all of the information in it, and we also  
 3 published our EmphaSys program, the CD with all  
 4 of the information on it. Both of those ways.

5 Q. And would you consider those sources of  
 6 information, both the EmphaSys software and the  
 7 binders, to be methods of promotion of drug  
 8 products by GeriMed?

9 A. For the products that were available on  
 10 contract, yes.

11 Q. And were those mechanisms of promotion  
 12 funded by administration fees or marketing fees?

13 MR. COOK: Objection.

14 THE WITNESS: Part of the services that  
 15 we provide to the drug manufacturers is to  
 16 promote the contracts that we have available.  
 17 That is part of what we do.

18 BY MR. ANDERSON:

19 Q. Right.

20 And in turn, the manufacturers pay  
 21 GeriMed what are known as administration fees or  
 22 marketing fees, correct?

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1 A. Correct.

2 Q. And would you consider the GeriMed  
 3 provided binders or software, such as EmphaSys,  
 4 to be aspects of that drug promotion?

5 A. Yes.

6 Q. Now, you testified this morning, and I  
 7 think previously, that the administration --  
 8 contract administration fees or marketing fees  
 9 range from -- anywhere from zero to 3 percent,  
 10 correct?

11 A. Correct.

12 Q. And then specifically, you recall that  
 13 Abbott pays somewhere between 2 and 3 percent,  
 14 correct?

15 A. Correct.

16 Q. In looking at some of the past contract  
 17 price sales totals, I noticed that Abbott was --  
 18 Abbott products were being purchased by GeriMed  
 19 members in the \$1.3 million range.

20 Does that sound about right?

21 A. Based on the numbers we looked at this  
 22 morning, yeah.

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<p style="text-align: right;">Page 242</p> <p>1 Q. If you could turn, please, to the 2 second page of the slides, marked as Exhibit 6, 3 and it's the slide entitled, "The GeriMed 4 Agreement Goals." 5 Based upon your inferring that this 6 document was created by Abbott, would it be your 7 understanding that these are the four goals that 8 would be identified by Abbott for Abbott's 9 agreement with GeriMed? 10 A. Yes. 11 Q. What are the four goals that are 12 identified in Exhibit 6 as the goals of the 13 GeriMed agreement? 14 A. Reduce drug costs, deliver innovative 15 quality products, provide field support, medical 16 department support. 17 Q. Okay. Anywhere on here does the author 18 of these slides indicate that marketing products 19 based upon AWP is one of the goals of the 20 agreement with GeriMed? 21 A. No. 22 Q. In fact, there is a reference to drug</p>	<p style="text-align: right;">Page 244</p> <p>1 was not one of the goals of Abbott's agreement 2 with GeriMed to somehow take advantage of Federal 3 health care programs such as Medicare and 4 Medicaid? 5 MR. GOBENA: Objection. Form. 6 THE WITNESS: Again, I mean, I don't -- 7 I can't say one way or the other. I mean, it's 8 not something that anyone came up and said 9 anything to me about. 10 BY MR. COOK: 11 Q. Standing just on the GeriMed side of 12 the agreement, is it fair to say that GeriMed did 13 not see its relationship with Abbott as being 14 simply a means of taking advantage of Federal 15 health care programs such as Medicare and 16 Medicaid? 17 A. I would say -- 18 MR. GOBENA: Objection. Form. 19 THE WITNESS: -- that that's true. 20 That's not -- that was not the purpose of the 21 agreement. 22 BY MR. COOK:</p>
<p style="text-align: right;">Page 243</p> <p>1 costs on this slide, correct? 2 A. Correct. 3 Q. And it refers only to the drug cost 4 side of that equation, not to the AWP side of 5 that equation, correct? 6 A. Correct. 7 Q. Is that consistent with your experience 8 with Abbott when it comes to Abbott's selling of 9 its product based upon cost? 10 A. Again, I'm going to say it was a long 11 time ago, and I do not -- I mean, this is what's 12 in writing, but I do not remember exactly what 13 conversations that I had with Abbott 14 representatives. 15 Q. Would Abbott representatives, in your 16 general recollection, attempt to sell its 17 products to GeriMed by offering the lowest cost 18 for the highest quality? 19 A. Again, I -- it's hard for me to say 20 when I met with a lot of manufacturers, and it's 21 a lot -- a long time ago. 22 Q. Can you say with some certainty that it</p>	<p style="text-align: right;">Page 245</p> <p>1 Q. Has that ever been the purpose of any 2 of GeriMed's actions? 3 A. No. 4 Q. If you would, turn to Exhibit 7 that 5 Mr. Gobena discussed with you. 6 And for the record, Exhibit 7 is the 7 document labeled, "Strategies for Success" that 8 was previously marked Exhibit 340 in your Texas 9 deposition. 10 You see there's a list of -- of 11 companies that are sponsors and provided 12 educational grants for -- for this particular 13 presentation. 14 Do you see that? 15 A. Yes. 16 Q. Is Abbott one of those companies? 17 A. No. 18 Q. You testified that the mechanism for 19 pharmaceutical manufacturers to support these 20 seminars was through unrestricted grants. 21 Do you recall that? 22 A. Yes.</p>

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1 reflective of cost to the patient whether it's a  
 2 third-party payor or a private pay patient.  
 3 Q. All right.  
 4 A. So, we did change that wording in there  
 5 to be the -- the third-party payor.  
 6 Q. So, it's the cost to the third-party  
 7 payor?  
 8 A. Correct.  
 9 Q. So, now the sentence for B is, the cost  
 10 to the third-party payor, such as, let's say, a  
 11 state Medicaid program?  
 12 A. Correct.  
 13 Q. That -- that's a significant criteria?  
 14 A. That's a -- that is something to look  
 15 at, yes. Absolutely.  
 16 Q. But in the instance of this particular  
 17 list of criteria here, item B only really applies  
 18 to private pay patients; it doesn't apply to  
 19 government --  
 20 A. In 1992, yes.  
 21 Q. So, if you're talking about in 1992,  
 22 we're talking about -- and you have a generic

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1 drug that's being reimbursed by a governmental  
 2 third-party payor, really the two most -- and  
 3 that's -- and then really the last two criteria  
 4 are the ones that are going to be the most  
 5 significant; isn't that correct?  
 6 A. The cost of the drug is always -- I  
 7 mean, it's -- that's always an important piece of  
 8 what you look at when you're making a  
 9 recommendation. We never made a -- we never  
 10 chose a drug based on that it's the highest cost,  
 11 but it's got the best spread. Oh, we'll pick  
 12 that drug. We've never done that in here, ever.  
 13 Q. What's more important to --  
 14 A. Ever, ever, ever.  
 15 Q. Sorry. I didn't mean to interrupt.  
 16 What's -- what's more important to your  
 17 members? Profitability or cost?  
 18 A. Both.  
 19 Q. But --  
 20 A. I mean --  
 21 Q. -- you're saying both are equally  
 22 important?

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1 A. Yes. Absolutely. We never chose a  
 2 drug solely because it had the best AWP spread as  
 3 a drug that we would say to the member, "This is  
 4 the drug you should buy." That is not part of  
 5 our philosophy. It's never been that way in the  
 6 whole time I've been there.  
 7 Q. I -- I'm sorry. I want to make sure I  
 8 understand your -- your testimony.  
 9 Your testimony is that you never --  
 10 GeriMed never selected drugs to enter into  
 11 contracts on -- based on the -- a better  
 12 reimbursement spread?  
 13 A. No.  
 14 MR. COOK: Objection.  
 15 THE WITNESS: That is not what I said.  
 16 BY MR. GOBENA:  
 17 Q. Okay. I --  
 18 A. What I'm saying is, cost and AWP spread  
 19 were both considerations that we made when we  
 20 choose a drug.  
 21 If somebody came in with a drug --  
 22 let's talk about A versus B -- if somebody came

Page 273

1 in here and said they're charging a hundred  
 2 dollars for drug A and it's got a -- a \$400  
 3 spread on it, and somebody comes in here and  
 4 says, I got drug B and it's \$50 and the spread is  
 5 \$200, I wouldn't pick that drug that's a hundred  
 6 dollars because it's got a better spread, okay?  
 7 I could potentially put both of them on  
 8 the contract, but the one that the people would  
 9 be directed to would be the one that's \$50  
 10 because that's a better cost for everybody.  
 11 Q. When you're talking about the cost now,  
 12 with respect to generic drugs, let's say there's  
 13 a manufacturer of two generic -- the same generic  
 14 drug, two manufacturers.  
 15 Would the -- would the cost  
 16 differential really be that significant as -- as  
 17 laid out in your hypothetical?  
 18 MR. COOK: Objection.  
 19 THE WITNESS: It could be, yes.  
 20 Absolutely.  
 21 BY MR. GOBENA:  
 22 Q. Could you give me an example where that

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